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Vol. I

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1938

No. 314

WICHITA ROYALTY COMPANY ET AL.,
PETITIONERS,

vs.

CITY NATIONAL BANK OF WICHITA FALLS ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED AUGUST 30, 1938.

CERTIORARI GRANTED OCTOBER 17, 1938.

INDEX

	PAGE
Caption	1
Proceedings in State Court:	
Plaintiff's Second Amended Original Petition	1
Exhibit "A"—Mortgage, Wichita Royalty Company to Guy Rogers, dated 2/25/32	18
Exhibit "B"—List of Royalties in Wichita County, Texas	19
Exhibit "C"—Trustee's Deed, dated 8/7/34	28
Third Amended Original Answer, Cross-Action and Inter-Pleader of defendant Wichita Royalty Company	33
Petition by City National Bank, et al., for Removal	88
Notice by City National Bank, et al., for Removal	98
Bond of City National Bank, et al., for Removal	100
Petition by Robert W. Peckham for Removal	104
Notice by Robert W. Peckham, et al., for Removal	107
Bond of Robert W. Peckham for Removal	109
Petition by Hazel D. Peckham for Removal	110
Bond of Hazel D. Peckham, et al., for Removal	115
Proceedings in U. S. District Court:	
Original Plea of Wichita Royalty Co., et al., to Jurisdiction and Motion to Remand	117
Order overruling Plea of Wichita Royalty Co., et al., to Jurisdiction and Motion to Remand	126
Repleaded Bill of Complaint of City National Bank of Wichita Falls	127
Exhibit "A"—Mortgage, Wichita Royalty Company to Guy Rogers, dated 2/25/32 (Omitted)	150

INDEX—Continued

PAGE

Repleaded Bill of Complaint—(Continued):
- Exhibit "B"—List of Royalties in Wichita County, Texas (Omitted) 150
- Exhibit "C"—Trustee's Deed, dated 8/7/34 (Omitted) 150
- Exhibit "D"—Contract between The City National Bank of Wichita Falls and City National Bank in Wichita Falls, dated 3/15/33 with Exhibits "A" and "B" attached 151
- Exhibit "E"—Notice of Lis Pendens of Wichita Royalty Company 161

Amended Plea of Wichita Royalty Co., et al., to Jurisdiction and Motion to Remand 162

Opinion of the Court on Amended Plea of Wichita Royalty Co., et al., to Jurisdiction and Motion to Remand 166

Order overruling Motion of Wichita Royalty Co., et al., to Jurisdiction and to Remand and exception thereto 172

Answer of Wichita Royalty Co., et al., to Repleaded Bill of Complaint of City National Bank of Wichita Falls 172

Answer of Charles L. Black and Guy Rogers 188

Disclaimer of Guy Rogers, Trustee 189

Repleaded Cross-Bill of Complaint; Cross-Action and Inter-Pleader of Wichita Royalty Co., et al., against City Nat'l Bank of Wichita Falls, et al. 190

Cross-Complaint and Interpleader of Wichita Royalty Co., et al., against J. T. Harrell, et al. 232

Recasted Cross-Complaint and Interpleader of Wichita Royalty Co., et al., against City National Bank in Wichita Falls, et al. 244

Answer of City National Bank in Wichita Falls, et al., to Cross-Complainant and recasting pleadings of Wichita Royalty Co., et al. 249

INDEX—Continued

	PAGE
Cross Bill of Complaint of The City National Bank in Wichita Falls against The Wichita Royalty Company, et al.	256
Answer of J. T. Harrell, et al., to Cross-Complaint and Interpleader of Wichita Royalty Co., et al.	262
Answer of City Nat'l Bank of Wichita Falls, et al., to Cross Bill of The Wichita Royalty Co., et al.	277
Exhibit "A"—Claim in favor of Wichita Royalty Co., against G. W. Peckham, deceased	347
Answer of W. H. Peckham, Administrator and Heirs of G. W. Peckham, deceased	350
STATEMENT OF THE EVIDENCE	351
Case called for trial, etc.	351
Colloquy between Court and Counsel	351
Documentary Evidence on behalf of Plaintiff:	
Exhibit Plaintiff #1—Declaration of Trust by R. R. Robertson, dated 6/1/20	355
Exhibit Plaintiff #2—Statement by R. R. Robertson, Trustee, dated 4/13/22	363
Exhibit Plaintiff #3—Appointment of G. W. Peckham, Trustee, by Texas State Court on 1/2/23 in place of R. R. Robertson, Trustee, resigned	365
Exhibit Plaintiff #4—Acceptance of G. W. Peckham, dated 1/2/23 as Trustee	366
Exhibit Plaintiff #5—Resignation of R. R. Robertson, Trustee	367
Exhibit Plaintiff #6—Appointment of E. E. Scannell, Substitute Trustee by Texas State Court on 11/12/29 in place of G. W. Peckham, Trustee, deceased	367

INDEX—Continued

PAGE

Statement of the Evidence—(Continued):
Documentary Evidence for Plaintiff—(Cont'd):
Exhibit Plaintiff #7—Acceptance of E. E. Scannell, Substitute Trustee, dated 11/12/29 367
Exhibit Plaintiff #8—Promissory Note, Wichita Royalty Co. to order of City Nat'l Bk. of Wichita Falls, for $22,000.00, dated 6/26/30 368
Exhibit Plaintiff #9—Photostat of Promissory Note, The Texas Investment Co. to order of City National Bank of Wichita Falls, for $43,000.00, dated 6/9/30 ..... 370, 371
Exhibit Plaintiff #10—Pledge Agreement of The Texas Investment Company, dated 1/24/30 372
Exhibit Plaintiff #11—Stock Certificate No. 4 of 125 shares of Texas Investment Co. Stock transferred from the estate of G. W. Peckham, Administrator, to E. E. Scannell, Trustee, dated 1/24/30 376
Exhibit Plaintiff #11a—Stub showing receipt of Stock Certificate No. 4, etc. 376
Exhibit Plaintiff #12—Stock Certificate No. 11, for 325 Shares issued to E. E. Scannell, Trustee, dated 3/17/30 ... 377
Exhibit Plaintiff #12a—Stub showing receipt of Stock Certificate No. 11, etc. 377
Exhibit Plaintiff #13—Stock Certificate No. 1 for 125 Shares issued to W. H. Peckham, Administrator of the Estate of G. W. Peckham, from E. E. Scannell, Trustee, on 1/24/30 377
Exhibit Plaintiff #13a—Stub showing receipt of Stock Certificate No. 1, etc. 377

INDEX—Continued

PAGE

Statement of the Evidence—(Continued):
Documentary Evidence for Plaintiff—(Cont'd):
Exhibit Plaintiff #14—Balance Sheet Wichita Royalty Company, at the close of business Nov. 30, 1924 378
Exhibit Plaintiff #15—Balance Sheet Wichita Royalty Company, at the close of business April 30, 1928 380
Exhibit Plaintiff #16—By-Laws of The Texas Investment Company of Wichita Falls dated 1/24/30 382
Exhibit Plaintiff #17—Charter of The Texas Investment Company of Wichita Falls signed on 8/28/29 390
Exhibit Plaintiff #18—Description of Amended Charter of The Texas Investment Co. of Wichita Falls, dated 1/24/30 393
Exhibit Plaintiff #19—Minutes of First Meeting of Incorporators of Texas Investment Co. of Wichita Falls, held on 1/24/30 394

Exhibit Plaintiff #20—Waiver of Notice of Meeting of Board of Directors of Texas Investment Co. of Wichita Falls 398
Minutes of Meeting of Board of Directors of Texas Investment Co. of Wichita Falls, held on 1/24/30 399

Exhibit Plaintiff #21—Description of Amendment increasing the Capital Stock of the Texas Investment Co. of Wichita Falls, dated 1/24/30 400

INDEX—Continued

PAGE

Statement of the Evidence—(Continued):
Documentary Evidence for Plaintiff—(Cont'd):
Exhibit Plaintiff #22—Waiver of Notice of Special Meeting of the Stockholders of the Texas Investment Co. of Wichita Falls 400
Minutes of Special Meeting of Stockholders of the Texas Investment Co. of Wichita Falls held on 3/17/30 401

Exhibit Plaintiff #23—Balance Sheet of Marlborough Addition as of January 1, 1930 403
Exhibit Plaintiff #24—Description of Amendment decreasing the Capital Stock of the Co., dated 3/17/30 ... 404

Exhibit Plaintiff #25—Waiver of Notice of Meeting of Board of Directors of Texas Investment Co. of Wichita Falls 404
Minutes of Special Meeting of Board of Directors of Texas Investment Co. of Wichita Falls on 3/17/30 405

Exhibit Plaintiff #26—Description of Original Cross-Action of the Wichita Royalty Co. against The City National Bank of Wichita Falls, filed on 2/14/31 in Texas State Court 407
Introduction of date of the Judgment of said case in Texas State Court as being on 2/25/32 407
Introduction of date of Judgment of the Court of Civil Appeals, affirming said case which is on 2/24/34 ... 407

INDEX—Continued

PAGE

Statement of the Evidence—(Continued):
Documentary Evidence for Plaintiff—(Cont'd):
Exhibit Plaintiff #26—(Continued):
Introduction of date of Judgment of the Supreme Court reversing the case 12/11/35 407
Introduction of date of re-hearing modifying the original opinion on 4/8/36 407

Exhibit Plaintiff #27—Deed of Trust, Wichita Royalty Co., by E. E. Scannell, Trustee, to Charles L. Black, et al., dated 12/6/33 408
Exhibit Plaintiff #28—Trustee's Deed by Ray Bland, Trustee, to Guy Rogers, Trustee under the Will of L. B. Rogers, deceased, dated 8/7/34 414
Exhibit Plaintiff #29—Introduction of Mortgage on certain properties in Oklahoma executed by the Wichita Royalty Company to Guy Rogers as mortgagee 419

Testimony of H. H. Carson 419
J. T. Harrell 420
Exhibit Defendants #1—Photostat of Report of Condition of The City Nat'l Bank of Wichita Falls, at the close of business on Dec. 31, 1929 (Offered on cross-examination) 433, 434
Exhibit Defendants #2—Photostat of Report of Condition of The City Nat'l Bank of Wichita Falls, at the close of business on Dec. 31, 1930 (Offered on cross-examination) 435, 436

INDEX—Continued

PAGE

Statement of the Evidence—(Continued):
Documentary Evidence for Plaintiff—(Cont'd):
Testimony of J. T. Harrell—(Continued):
Exhibit Defendants #3—Photostat of Report of Condition of The City National Bank at the close of business on Dec. 31, 1931, (Offered on cross-examination) 437, 438
Exhibit Defendants #4—Photostat of Report of Condition of The City National Bank at the close of business on Dec. 31, 1932, (Offered on cross-examination) 439, 440
Exhibit Defendants #5—Photostat of First Report after March 1, 1933, of Liquidating Agent of the City National Bank of Wichita Falls, for period ended Dec. 31, 1933 (Offered on cross-examination) 442
Exhibit Defendants #6—Photostat of Report of Liquidating Agent of The City Nat'l Bank of Wichita Falls for period ended December 31, 1934 (Offered on cross-examination) 444
Exhibit Defendants #7—Photostat of Report of Liquidating Agent of The City National Bank of Wichita Falls for period ended December 31, 1935 (Offered on examination) 445
Exhibit Defendants #8—Mineral Deed, J. T. Harrell and C. E. Basham to Wichita Royalty Company, dated 1/18/26 (Offered on cross-examination) 451

INDEX—Continued

PAGE

Statement of the Evidence—(Continued):
Documentary Evidence for Plaintiff—(Cont'd):
Testimony of J. T. Harrell—(Continued):
Exhibit Defendants #17—Tabulation of deposits of City National Bank at various calls for published Statements by the Comptroller of the Currency 455
Exhibit Defendants #9—Deposit Slip, Wichita Royalty Co. for $25,000.00, dated 3/10/36 with City Nat'l Bank 458
Exhibit Defendants #10—Deposit Slip, Wichita Royalty Co. for $15,000.00, dated 1/18/36 with City Nat'l Bank 459

Testimony of H. H. Carson (Recalled) 463
Exhibit Plaintiff #31—Mineral Deed, G. W. Peckham to Wichita Royalty Company, dated 12/6/26 ... 464
Exhibit Plaintiff #32—Mineral Deed, George Peckham to Wichita Royalty Company, dated 12/6/26 465
Objection of Wichita Royalty Co. to the introduction of the Deeds, overruled and exceptions noted 465
Exhibit Plaintiff #33—Mineral Deed, G. W. Peckham to Wichita Royalty Company, dated 12/6/26 ... 467
Exhibit Plaintiff #34—Mineral Deed, G. W. Peckham to Wichita Royalty Company, dated 12/7/26 ... 468
Exhibit Plaintiff #35—Mineral Deed, G. W. Peckham to Wichita Royalty Company, dated 12/7/26 ... 468

INDEX—Continued

PAGE

Statement of the Evidence—(Continued):
Documentary Evidence for Plaintiff—(Cont'd):
Testimony of H. H. Carson—(Continued):
Exhibit Plaintiff #36—Mineral Deed, G. W. Peckham to Wichita Royalty Company, dated 12/7/26 ... 469
Exhibit Plaintiff #37—Mineral Deed, G. W. Peckham to Wichita Royalty Company, dated 12/6/26 ... 470
Exhibit Plaintiff #38—Mineral Deed, G. W. Peckham to Wichita Royalty Company, dated 12/7/26 ... 471
Renewed objection of Wichita Royalty Co. to the introduction of the Deeds, overruled and exception thereto 472
Exhibit Defendant #11—Description of Individual Ledger Statement of G. W. Peckham with the Security Nat'l Bank of Wichita Falls 479
Exhibit Defendant #12—Description of Individual Ledger Account of G. W. Peckham with the Security Nat'l Bank 479
Exhibit Defendant #13—Description of Individual Ledger Sheet Account of G. W. Peckham with the Security Nat'l Bank 479
Exhibit Defendant #14—Deed, W. S. Curlee to J. T. Harrell and G. W. Peckham, dated 1/8/26 483
Exhibit Defendant #15—Deed, G. W. Peckham to J. T. Harrell and C. E. Basham, dated 1/23/26 ... 483

INDEX—Continued

PAGE

Statement of the Evidence—(Continued):
Documentary Evidence for Plaintiff—(Cont'd):
Testimony of H. H. Carson—(Continued):
Exhibit Defendant #16—Escrow Contract between The Wichita Royalty Co., by G. W. Peckham, Trustee, and The Petroleum Royalties Corporation, dated 11/25/27 519
Exhibit Plaintiff #39—Memorandum of Draft for $1,920.00 530
Exhibit Plaintiff #40—Voucher accompanied by Draft of $1,920.00 531
Exhibit Plaintiff #41—Assignment of Deed, Joseph M. Perkins to G. W. Peckham, dated 8/7/26 532
Exhibit Plaintiff #42—Deed, G. W. Peckham to Wichita Royalty Company, dated 8/7/26 532
Portion of Memorandum Book of G. W. Peckham 537
Exhibit Plaintiff #43—Number of Checks payable to Wichita Royalty Co., signed by G. W. Peckham, except where otherwise stated covering various amounts 557
Three Cashier's Checks with checks of G. W. Peckham payable to City Nat'l Bank, etc. 561
Deposit Slips showing these Cashier's Checks were deposited to account of Wichita Royalty Company, also ledger sheet showing deposit of $598.89 to account of Wichita Royalty Company with deposit slip corresponding 563

INDEX—Continued

PAGE

Statement of the Evidence—(Continued):
Documentary Evidence for Plaintiff—(Cont'd):
Testimony of H. H. Carson— (Continued):
Exhibit Defendant #18—Photostat of Royalty Deed, A. J. Mathas and Wife to Wichita Royalty Co., dated 10/14/25 ..... 568, 569
Exhibits Defendant #19 & 20—Photostats of Bank Statements of G. W. Peckham in account with City National Bank 576, 577
Exhibits Plaintiff #44 & 45— Photostats of Bank Statement of G. W. Peckham in account with City National Bank, Wichita Falls, Texas 579-609
Exhibit Defendants #21—Contract between The City National Bank of Wichita Falls and City National Bank in Wichita Falls, dated 3/15/33 with Exhibits "A" and "B" attached, held on 6/-30/33 613

Exhibit Defendants #22—Minutes of Called Meeting of the Stockholders of The City National Bank of Wichita Falls 625
Minutes of Meeting of Board of Directors of The City National Bank of Wichita Falls, held on 6/30/33 629

Exhibit Plaintiff #46—Minutes of Meeting of Board of Directors of The City National Bank of Wichita Falls, held on 3/25/33 631

INDEX—Continued

PAGE

Statement of the Evidence—(Continued):
Documentary Evidence for Plaintiff—(Cont'd):
Testimony of H. H. Carson—(Continued):
Exhibit Defendants #23—Minutes of Meeting of Board of Directors of The City Nat'l Bk. of Wichita Falls, held on 3/15/33 632
Exhibit Defendants #24—Repurchase Agreement between Frank Kell, et al., and First National Bank in Dallas, dated 12/23/30 639

Evidence for Defendants:
Testimony of J. T. Harrell (Recalled) ... 644
H. H. Carson (Recalled) ... 646
Exhibit Defendant #25—Photostat of Report of Comptroller of Condition of the City National Bank of Wichita Falls at the close of business on Oct. 4, 1929 647-650

Testimony of E. E. Scannell 651
Exhibit Defendant #26—Letter, Wichita Royalty Co., addressed "To The Stockholders of Wichita Royalty Co.," undated 653
Balance Sheets Wichita Royalty Co., at close of business Dec. 31, 1925 655

Exhibit Defendant #31—Balance Sheet, Wichita Royalty Co., at close of business Dec. 31, 1925 656
Letter, Wichita Royalty Co., addressed "To The Stockholders of Wichita Royalty Co.," dated 1/15/26 657

INDEX—Continued

PAGE

Statement of the Evidence—(Continued):
Evidence for Defendants—(Continued):
Testimony of E. E. Scannell—(Continued):
Exhibit Defendant #27—Letter, Wichita Royalty Co., addressed "To The Stockholders of Wichita Royalty Co.," dated 3/15/27 ... 659

Exhibit Defendant #28—Letter, Wichita Royalty Co., addressed "To The Stockholders of Wichita Royalty Co.," dated 8/1/28 665
Balance Sheets Wichita Royalty Co., at close of business May 31, 1928 670

Exhibit Defendant #29—Letter, Wichita Royalty Co., addressed "To The Stockholders of Wichita Royalty Co.," undated 671
Balance Sheets Wichita Royalty Co., at close of business May 31, 1929 673

Exhibit Defendant #30—Letter, Wichita Royalty Co., addressed "To The Stockholders of Wichita Royalty Co.," dated 11/30/29 .. 674
Memo. of appointment of E. E. Scannell as Trustee by Texas State Court 675

Exhibit Defendant #32—Letter. Wichita Royalty Co., addressed "To The Stockholders of Wichita Royalty Co.," dated 9/30/29 ... 675

INDEX—Continued

PAGE

Statement of the Evidence—(Continued):
Evidence for Defendants—(Continued):
Testimony of E. E. Scannell—(Continued):
Exhibit Defendant #32—(Continued):
Balance Sheet Wichita Royalty Co., at close of business May 31, 1929 677

Exhibit Defendant #33—Letter, Wichita Royalty Co., addressed "To The Stockholders of Wichita Royalty Co.," dated 2/2/31 678
Exhibit Defendant #34—Letter, Wichita Royalty Co., addressed "To The Stockholders of Wichita Royalty Co.," dated 1/15/34 .. 680
Exhibit Defendant #35—Mineral Deed from A. Grimshaw and Wife to G. W. Peckham, dated 2/12/23 700
Exhibit Defendant #36—Deed from George W. Peckham to Wichita Royalty Co., dated 3/12/23 700
Exhibit Defendant #37—Deed from G. W. Peckham to F. O. Harrell, dated 5/12/23 701
Exhibit Defendant #38—Condensed Statement of Oil Runs and amount received from them, Royalty No. 71—Grimshaw Sale of Oil & Gas 704
Exhibit Defendant #39—Mineral Deed, G. W. Peckham to Wichita Royalty Co., dated 4/24/24 706
Exhibit Defendant #40—Photostat of Production Record headed "Royalty 75 Luke Wilson Sale of Oil & Gas" 711

INDEX—Continued

PAGE

Statement of the Evidence—(Continued):
Evidence for Defendants—(Continued):
Testimony of E. E. Scannell—(Continued):
Exhibit Defendant #41—Record of Production Royalty 79 Routon 714
Exhibit Defendant #42—Statement of Oil Runs Royalty 80 Sale of Oil & Gas 717
Exhibit Defendant #43 -Statement Milner Oil Payments 720
Exhibit Defendant #44—Assignment of Oil & Gas Lease from B. L. Fain to Wichita Royalty Co., undated 721

Testimony of E. E. Scannell (Recalled) .. 730
Exhibit Defendant #45—Deed from G. W. Peckham to Wichita Royalty Co., dated 4/10/26 733
Objection of Wichita Royalty Co. to introduction of Exhibit Deft. 45, Deed executed by G. W. Peckham to Wichita Royalty Co., describing the property known as a half interest in the Marlborough Addition, overruled and exception thereto 736
Exhibit Defendants #46—Journal Entry 27 738
Exhibit Defendants #47—Journal Entry 28 739
Exhibit Defendants #48—Offsetting entry debit side of ledger sheet of The Wichita Royalty Co., on the Marlborough Addition 741
Exhibit Defendants #49—Notes payable on Journal Entries 743

INDEX—Continued

PAGE

Statement of the Evidence—(Continued):
Evidence for Defendants—(Continued):
Testimony of E. E. Scannell—(Continued):
Exhibit Defendants #50—Ledger Sheet No. 50 748
Exhibits Defendants Nos. 51 to 75 inclusive—Series of Checks, G. W. Peckham to order of E. E. Scannell for various amounts and dates 749
Exhibit Defendants #76—Check, G. W. Peckham to order of Cash for $1,000.00, dated 6/15/26 763
Exhibits Defendants #77 to 98 inclusive—Series of Checks, G. W. Peckham to order of E. E. Scannell for various amounts and dates 763
Exhibit Defendants #99—Description of Deed, E. E. Scannell and Wife to George Peckham, (same as Exhibit Defts. #109) 777
Exhibit Defendants #100—Check, signed E. E. Scannell for Trustee to order of E. E. Scannell, for $1200.00, dated 1/16/26 779
Exhibit Defendants #101—Check, signed E. E. Scannell for Trustee to order of E. E. Scannell, for $300.00, dated 1/18/26 779
Exhibit Defendants #102—Check, signed E. E. Scannell for Trustee to order of E. E. Scannell, for $400.00, dated 1/19/26 780
Exhibit Defendants #103—Book Memo No. 158 782

INDEX—Continued

PAGE

Statement of the Evidence—(Continued):
Evidence for Defendants—(Continued):
Testimony of E. E. Scannell—(Continued):
Exhibit Defendants #104—Book Memo No. 155 782
Exhibit Defendants #105—Check, G. W. Peckham to order of Wichita Royalty Co. for $1,235.99, dated 1/30/26 783
Exhibit Defendants #106—Check, G. W. Peckham to order of Wichita Royalty Co. for $1,103.13, dated 2/18/26 784
Exhibit Defendants #107—Letter, G. W. Peckham to Wichita Royalty Company, dated 4/10/26 785
Exhibit Defendants #108—Check, G. W. Peckham to order of B. L. Fain, for $1,500.00, dated 11/12/25 793
Exhibit Plaintiff #47—Deed from E. E. Scannell, Trustee, to Texas Investment Company, dated 3/29/30 795
Exhibit Defendants #109—Deed from E. E. Scannell and Wife to G. W. Peckham, dated 2/14/27 801
Exhibit Plaintiff #48—Affidavit of E. E. Scannell, Trustee, to Claim in favor of Wichita Royalty Co. against G. W. Peckham, deceased, dated 12/16/30 806
Payments by Wichita Royalty Co. unaccounted for by City Nat'l Bank during G. W. Peckham Administration less payments by G. W. Peckham on behalf of Wichita Royalty Company 807

INDEX—Continued

PAGE

Statement of the Evidence—(Continued):
Evidence for Defendants—(Continued):
Testimony of E. E. Scannell—(Continued):
Exhibit Defendants #110—Assignment from B. L. Fain to Wichita Royalty Company, dated 4/-19/23 811

Evidence for Plaintiff:
Testimony of H. H. Carson (Recalled) ... 815
Exhibit Plaintiff #49—Check, G. W. Peckham to order of First National Bank for $2,252.25, dated 10/17/25 818
Exhibit Plaintiff #50—Check, G. W. Peckham to order of Rev. Stamps for $2.50, dated 10/20/25 818
Exhibit Plaintiff #51—Check, G. W. Peckham to order of C. A. Rogers for $225.00, dated 10/24/25 819
Exhibit Plaintiff #52—Check, G. W. Peckham to order of E. C. DeMontel for $71.00, dated 11/3/25 819
Exhibit Plaintiff #53—Mineral Deed, B. L. Fain to Wichita Royalty Company, dated 10/9/25 820
Exhibit Plaintiff #54—Check, G. W. Peckham to order of Wichita Royalty Co., for $1,500.00, dated 11/6/25 822
Exhibit Plaintiff #55—Original Record of Cash received from G. W. Peckham, dated 11/10/25 822
Exhibit Plaintiff #56—Check, E. E. Scannell for Trustee to order of City Nat'l Bank for $1,250.00, dated 12/28/35 823

INDEX—Continued

PAGE

Statement of the Evidence—(Continued):
Evidence for Plaintiff—(Continued):
Testimony of H. H. Carson—(Continued):
Exhibit Plaintiff #57—Check, E. E. Scannell for Trustee to order of City Nat'l Bank for $5,500.00, dated 10/8/25 824
Exhibits Plaintiff Nos. 58 and 59—2 Checks, G. W. Peckham to Knight & Hines, dated 12/18/25 and 12/21/25, respectively 824
Exhibit Plaintiff #60—Warranty Deed, M. L. Porter and Wife to W. T. Knight, et al., dated 12/1/25 ... 825
Exhibit Plaintiff #61—Journal Entry 18 828
Exhibit Plaintiff #62—Ledger Sheet 829
Exhibit Plaintiff #63—Check, G. W. Peckham to order of Wichita Royalty Co. for $111.67, dated 7/26/26 830
Exhibit Plaintiff #64—Check, G. W. Peckham to order of W. T. Knight for $21.63, dated 11/-26/28 831
Exhibit Plaintiff #65—Check, G. W. Peckham to order of W. T. Knight for $147.33, dated 12/5/27 831
Exhibit Plaintiff #66 and 67—Two Deposit Slips by G. W. Peckham for $5,000.00 each in City Nat'l Bk., dated 1/14/26 and 1/11/26, respectively 832
Exhibit Plaintiff #68—Deposit Slip by G. W. Peckham for $15,769.07 with City Nat'l Bank, dated 1/-18/26 833

INDEX—Continued

PAGE

Statement of the Evidence—(Continued):
Evidence for Plaintiff—(Continued):
Testimony of H. H. Carson—(Continued):
Exhibit Plaintiff #69 to 71 inclusive—Three checks, G. W. Peckham to order of J. T. Harrell and C. E. Basham for various amounts and dates 835
Exhibit Plaintiff #72—Check, G. W. Peckham to order of J. T. Harrell and Geo. W. Peckham, for $5,087.00, dated 3/31/26 835
Exhibit Plaintiff #73—Deed from W. S. Curlee to J. T. Harrell, et al., dated 1/8/26 836
Exhibit Plaintiff #74—Deed from G. W. Peckham to J. T. Harrell, et al., dated 1/23/26 837
Agreement that on Oct. 12, 1925, the books of E. C. DeMontel show that he rendered an opinion to G. W. Peckham on 71 acres of the D. Milligan Survey, Callahan County, Texas, etc. 838
Exhibit Plaintiff #75—Deposit Slip by G. W. Peckham in City National Bank for $17,623.70, dated 3/6/26 840
Exhibit Plaintiff #76—Deed, W. H. Peckham to G. W. Peckham, dated 3/25/26 842
Exhibit Plaintiff #77—Check, G. W. Peckham to order of W. H. Peckham for $11,811.85, dated 3/1/26 845
Exhibit Plaintiff #78—Deed, Highland Irrigation Company to J. A. Kemp, et al., dated 9/19/25 847

INDEX—Continued

PAGE

Statement of the Evidence—(Continued):
Evidence for Plaintiff—(Continued):
Testimony of H. H. Carson—(Continued):
Exhibit Plaintiff #79—Deed, Highland Irrigation Company to J. A. Kemp, et al., dated 1/8/26 850
Exhibit Defendant #111—Check, signed by E. E. Scannell for Trustee to order of City Nat'l Bank for $17,023.70, dated 3/6/26 ... 853
Exhibit Defendant #112—Check, signed E. E. Scannell for Trustee to order of City Nat'l Bank for $6,000.00, dated 3/6/26 853
Exhibit Plaintiff #80—Deposit Slip by G. W. Peckham in City Nat'l Bank for $7,500.00, dated 3/31/26 854
Exhibit Defendant #113—Check, signed E. E. Scannell for Trustee to order of G. W. Peckham for $5,000.00, dated 1/4/26 856
Exhibit Defendant #114—Check, signed E. E. Scannell for Trustee to order of City Nat'l Bank for $5,000.00, dated 1/11/26 856
Exhibit Defendant #115—Check, signed E. E. Scannell for Trustee to order of City Nat'l Bank for $15,769.07, dated 1/18/26 ... 856
Exhibit Defendant #116—Check, signed E. E. Scannell for Trustee to order of City Nat'l Bank for $7,500.00, dated 3/31/26 856
Exhibit Plaintiff #81—Deposit Slip by G. W. Peckham in City Nat'l Bank for $3,000.00, dated 5/20/26 858

INDEX—Continued

PAGE

Statement of the Evidence—(Continued):
Evidence for Plaintiff—(Continued):
Testimony of H. H. Carson—(Continued):
Exhibit Plaintiff #82—Deposit Slip by G. W. Peckham in City National Bank for $1,500.00, dated 6/2/26 858
Exhibit Plaintiff #83—Deposit Slip by G. W. Peckham in City National Bank for $4,500.00, dated 6/16/26 858
Exhibit Plaintiff #84—Deposit Slip by G. W. Peckham in City National Bank for $1,000.00, dated 7/15/26 858
Exhibit Plaintiff #85—Check, G. W. Peckham to order of Marlborough Addition for $4,500.00, dated 6/19/26 860
Exhibit Plaintiff #86—Check, G. W. Peckham to order of Marlborough Addition for $1,000.00, dated 7/23/26 860
Exhibit Plaintiff #87—Deposit Slip by G. W. Peckham in City National Bank for $4,000.00, dated 8/2/26 864
Exhibit Plaintiff #88—Deposit Slip by G. W. Peckham in City National Bank for $4,357.58, dated 8/27/26 864
Exhibit Plaintiff #89—Deposit Slip by G. W. Peckham in City National Bank for $998.16, dated 1/3/27 864
Exhibit Plaintiff #90—Deposit Slip deposited with City National Bank for the credit of Highland Irrigation Company, $19,191.48, dated 10/15/26 865
Exhibit Plaintiff #91—Photostat of Ledger Account of G. W. Peckham with City Nat'l Bank, Wichita Falls 868, 869

INDEX—Continued

PAGE

Statement of the Evidence—(Continued):
Evidence for Plaintiff—(Continued):
Testimony of H. H. Carson—(Continued):
Exhibit Plaintiff #92—Check, J. T. Harrell to order of Highland Irrigation Company for $4,797.87, dated 10/4/26 870
Exhibit Plaintiff #93 to 95 inclusive—Deposit Slips by G. W. Peckham in City National Bank for various amounts and dates 872
Exhibit Plaintiff #96—Check, G. W. Peckham to order of W. T. Knight for $1141.82, dated 12/-2/26 874
Exhibit Plaintiff #97—Receipt from W. T. Knight, dated 12/8/26 .. 874
Letter, Jno. P. Fleming Cashier to W. T. Knight, undated 876
Exhibit Plaintiff #98—Check, G. W. Peckham to order of A. A. Peard for $160.00, dated 11/1/26 877
Exhibit Plaintiff #99—Assignment of Oil & Gas Lease from George W. Peckham to Wichita Royalty Co., dated 10/8/26 878
Exhibit Plaintiff #100—Deposit Slip by G. W. Peckham in City National Bank, dated 2/19/27 for $4,000.00 881
Exhibit Plaintiff #101—Deposit Slip by G. W. Peckham in City National Bank, dated 1/19/27 for $2,000.00 881

INDEX—Continued

PAGE

Statement of the Evidence—(Continued):
Evidence for Plaintiff—(Continued):
Testimony of H. H. Carson—(Continued):
Exhibit Plaintiff #102—Deposit Slip by G. W. Peckham in City National Bank, dated 3/8/27 for $500.00 882
Exhibit Plaintiff #103—Check, G. W. Peckham to order of City National Bank for $500.00, dated 12/8/26 883

Exhibit Plaintiff #104—Photostat of Ledger Account of Wichita Royalty with City National Bank, Wichita Falls 884, 885
Photostat of Ledger Account of G. W. Peckham, Trus, Wichita Royalties Co., with National Bank, Wichita Falls 886

Exhibit Plaintiff #105—Check, E. E. Scannell, for Trustee to order of City National Bank for $500.-00, dated 3/1/27 887
Exhibit Plaintiff #106—Deposit Slip by G. W. Peckham in City Nat'l Bank for $2,037.02, dated 3/-23/27 888
Exhibit Plaintiff #107—Voucher 889
Exhibit Plaintiff #108 to 113 inclusive —Deposit Slips by G. W. Peckham with City National Bank for various amounts and dates 890
Exhibit Plaintiff #114—Photostat of Liability Ledger of Wichita Royalty Company with City Bank, Wichita Falls 895

INDEX—Continued

PAGE

Statement of the Evidence—(Continued):
Evidence for Plaintiff—(Continued):
Testimony of H. H. Carson—(Continued):
Exhibit Plaintiff #115 to 119 inclusive—Checks, G. W. Peckham to order of City Nat'l Bank for various amounts and dates 896
Exhibit Defendant #117—Check, E. E. Scannell, for Trustee to order City Nat'l Bank for $1200.00, dated 6/18/27 898
Exhibit Defendant #118—Check, G. W. Peckham, Trustee to order of City Nat'l Bank for $1,500.00, dated 8/16/27 898
Exhibit Defendant #119 to 122 inclusive—Checks, E. E. Scannell, for Trustee to order of City Nat'l Bank for various amounts and dates 898
Exhibit Plaintiff #120 to 130 inclusive—Checks, E. E. Scannell, for Trustee to order of City Nat'l Bank, Wichita Falls, for various amounts and dates 900
Exhibit Plaintiff #131—Deposit Slip by Texas Investment Co. of Wichita Falls in City Nat'l Bank for $1,500.00, dated 1/25/30 ... 907
Exhibit Plaintiff #132—Check, E. E. Scannell, for Trustee to order of Marlborough Addition for $1-,500.00, dated 1/24/30 908
Exhibit Plaintiff #133—Check, E. E. Scannell, for Trustee to order of City Nat'l Bank for $1,000.00, dated 2/24/30 908

INDEX—Continued

PAGE

Statement of the Evidence—(Continued):
Evidence for Plaintiff—(Continued):
Testimony of H. H. Carson—(Continued):
Exhibits Plaintiff #134 and 136—Voucher Notations 909
Exhibit Plaintiff #137—Check, E. E. Scannell, for Trustee to order of City Nat'l Bk. for $1,000.00, dated 4/10/30 911
Exhibit Plaintiff #138—Check, E. E. Scannell, for Trustee to order of Texas Investment Co., for $500.00, dated 5/13/30 911
Exhibit Plaintiff #139—Deposit Slip by Texas Investment Co. in City National Bank for $500.00, dated 5/13/30 911
Exhibit Plaintiff #140—Voucher Notation 912
Exhibit Plaintiff #141—Check. E. E. Scannell, for Trustee to order of City Nat'l Bk. for $1500.00, dated 6/14/30 913
Exhibit Plaintiff #142—Voucher Notation 913
Exhibit Plaintiff #143—Check, E. E. Scannell, for Trustee to order of City Nat'l Bank for $3,055.42, dated 7/14/30 914
Exhibit Plaintiff #144—Voucher Notation 914
Exhibit Plaintiff #145—Deposit Slip by G. W. Peckham in City National Bank for $6,000.00, dated 2/15/28 915
Exhibit Plaintiff #146—Check, G. W. Peckham to order of W. C. Duncan, for $6,000.00, dated 2/6/28 916

INDEX—Continued

PAGE

Statement of the Evidence—(Continued):
Evidence for Plaintiff—(Continued):
Testimony of H. H. Carson—(Continued):
Exhibit Plaintiff #147—Check, G. W. Peckham to order of White & Duncan for $300.00, dated 2/-15/28 916
Exhibit Plaintiff #148—Photostat of Ledger Account of G. W. Peckham, with City Nat'l Bank, Wichita Falls 918, 919
Exhibit Plaintiff #149—Photostat of Ledger Sheets of Account of G. W. Peckham with City National Bank 922, 923
Exhibit Plaintiff #150—Check, G. W. Peckham to order of W. C. Duncan, for $300.00, dated 12/5/27 924
Exhibits Plaintiff #151 to 153 inclusive—Voucher Records 929
Exhibits Plaintiff #154 to 156 inclusive—Three Checks, E. E. Scannell, for Trustee to order of City National Bank for various amounts and dates 930
Exhibit Plaintiff #157—Check, G. W. Peckham to order of Wichita Royalty Co. or Bearer for $302.98, dated 5/22/23 932
Exhibit Plaintiff #158—Check, G. W. Peckham to order of Wichita Royalty Co. or Bearer for $234.05, dated 5/15/23 932
Exhibit Plaintiff #159—Deposit Slip by G. W. Peckham in City National Bank for $12,000.00, dated 2/2/24 934

INDEX—Continued

PAGE

Statement of the Evidence—(Continued):
Evidence for Plaintiff—(Continued):
Testimony of H. H. Carson—(Continued):
Exhibit Plaintiff #160—Deposit Slip by G. W. Peckham in City Nat'l Bank for $9,292.36, dated 3/18/24 934
Exhibit Plaintiff #161—Check, E. E. Scannell, Trustee to order of Security Nat'l Bank for $10,000.00, dated 7/24/24 937
Exhibit Plaintiff #162—Check, E. E. Scannell, Trustee to order of Security Nat'l Bank for $11,000.00, dated 7/2/24 937
Exhibit Plaintiff #163—Deposit Slip by Wichita Royalty in City Nat'l Bank for $865.48, dated 4/17/25 938
Exhibit Plaintiff #164—Deposit Slip by Wichita Royalties in City Nat'l Bank for $3,168.49, dated 1/27/25 939
Exhibit Plaintiff #165—Assignment from C. W. Murchison, et al., to J. H. White, dated 12/15/24 ... 939
Exhibit Plaintiff #166—Original Record of Cash Received from Pipe Line Cos., dated 1/27/25 941
Exhibit Plaintiff #167—Original Record of Cash Received No. 118, dated 2/17/25 941
Exhibits Plaintiff #168 and 169—Voucher Sheets 942
Exhibit Plaintiff #170—Check, E. E. Scannell, for Trustee to order of G. W. Peckham, for $2500.00, dated 5/5/25 944

INDEX—Continued

PAGE

Statement of the Evidence—(Continued):
Evidence for Plaintiff—(Continued):
Testimony of H. H. Carson—(Continued):
Exhibit Plaintiff #171—Voucher Sheet 944
Exhibit Plaintiff #172—Mineral Deed from Geo. B. Ray, et al., to Wichita Royalty Co., dated 6/30/25 945
Exhibit Plaintiff #173—Check, G. W. Peckham to order of Ray & Massie, for $2500.00, dated 5/-5/25 946
Exhibit Plaintiff #174—Mineral Deed, George W. Peckham to Wichita Royalty Co., dated 7/1/25 948
Exhibit Plaintiff #175—Mineral Deed, G. W. Peckham to Wichita Royalty Company, dated 7/20/25 .. 949
Exhibit Plaintiff #176—Deposit Slip, G. W. Peckham in City National Bank, for $6,000.00, dated 6/-24/25 950
Exhibit Plaintiff #177—Deposit Slip, G. W. Peckham in City National Bank for $5,500.00, dated 6/-29/25 950
Exhibit Plaintiff #178—Check, G. W. Peckham to order of Murchison & Fain Oil Co., for $9,493.75, dated 6/25/25 951
Exhibits Plaintiff #179 & 180—Voucher Memorandums 951
Exhibit Plaintiff #181—Deposit Slip City National Bank of Olney for $1,000.00, dated 6/23/25 953

INDEX—Continued

PAGE

Statement of the Evidence—(Continued):
Evidence for Plaintiff—(Continued):
Testimony of H. H. Carson—(Continued):
Exhibit Plaintiff #182—Escrow Contract between G. W. Vernon, et al., dated 6/22/25, showing the mineral deed received by G. W. Peckham, etc. 953
Exhibit Plaintiff #183—Check, G. W. Peckham to order of City National Bank of Olney for $1,997.00, dated 6/29/25 956
Exhibits Plaintiff #184 to 187 inclusive—Four Checks, by E. E. Scannell, for Trustee payable to B. L. Fain 958
Exhibit Plaintiff #188—Check, G. W. Peckham for various amounts and dates to order of B. L. Fain for $1,000.00, dated 4/22/27 ... 959
Exhibit Plaintiff #189—Check, E. E. Scannell, for Trustee to order of G. W. Peckham, for $695.00, dated 12/23/24 959
Exhibit Plaintiff #190—Mineral Deed, F. O. Harrell to G. W. Peckham, Trustee for Wichita Royalty Co., dated 12/6/24 961
Exhibit Plaintiff #191—Deposit Slip by G. W. Peckham in City National Bank for $702.37, dated 12/23/24 962
Exhibit Defendant #123—Contract between G. W. Peckham and Wichita Royalty Company, dated 3/12/23 963

INDEX—Continued

PAGE

Statement of the Evidence—(Continued):
Evidence for Plaintiff—(Continued):
Testimony of H. H. Carson—(Continued):
Exhibit Defendant #124—Photostat of Bank Account of Wichita Royalty Company with City National Bank of Commerce 969-976
Photostat of Bank Account of Wichita Royalties Co. with City National Bank of Commerce 977-984
Photostat of Bank Account of Wichita Royalties Co. with City National Bank 985-994
Photostat of Bank Account of Wichita Royalties Co. with City Nat'l Bank of Commerce 995, 996
Photostat of Bank Account of Wichita Royalties Co. with City National Bank 997, 998
Photostat of Bank Account of Wichita Royalties Co. with City National Bank 999-1002
Photostat of Bank Account of Wichita Royalties Co. with City National Bank 1003-1008
Photostat of Bank Account of Wichita Royalties Co. with City Nat'l Bank of Commerce 1009, 1010
Photostat of Bank Account of Wichita Royalties Co. with City National Bank 1011-1036
Photostat of Bank Account of Wichita Royalty Co. with City National Bank 1037-1043

INDEX—Continued

PAGE

Statement of the Evidence—(Continued):
Evidence for Plaintiff—(Continued):
Testimony of H. H. Carson—(Continued):
Exhibit Plaintiff #192—Photostat of Record Book and date of the beginning of George Peckham's Administration 1045-1049
Exhibit Defendant #125—Photostat of Deposit Account and Liability Record of G. W. Peckham from the date of his administration, etc. 1050-1078
Exhibit Defendant #126—Photostat of Liability Ledger of G. W. Peckham in account with City National Bank 1080-1083
Exhibit Defendant #127—Photostat of Deposit Account and Liability Record of J. T Harrell from Jan. 1, 1926 to April 1, 1926, with City National Bank 1085. 1086
Exhibit Defendant #128—Photostat of Individual Deposit Account of J. T. Harrell with City National Bank 1088-1093
Exhibit Defendant #129—Photostat of Deposit Account and the Liability record of W. H. Peckham for the month of March, 1926, with City National Bank ... 1095,1096
Exhibit Defendant #130—Liability account of W. H. Peckham 1098
Exhibit Defendant #131—Photostat of Liability Record showing the charged off Liability Account of G. W. Peckham with City National Bank of Commerce 1102

INDEX—Continued

PAGE

Statement of the Evidence—(Continued):
Evidence for Plaintiff—(Continued):
Testimony of H. H. Carson—(Continued):
Exhibit Defendant #132—Photostat of Repurchase Agreement between J. T. Harrell, et al., and First National Bank in Wichita Falls, dated 9/23/32 1115
Photostat of Repurchase Agreement between J. T. Harrell, et al., and The First National Bank of Wichita Falls, dated 10/27/32 1116
Photostat of Repurchase Agreement between J. T. Harrell, et al., and The First National Bank of Wichita Falls, dated 11/17/32 1117
Photostat of Repurchase Agreement between J. T. Harrell, et al., and The First National Bank of Wichita Falls, dated 5/1/33 1118
Exhibit Defendant #133—Photostat of Daily Financial Statement of City National Bank 1123

Testimony of E. E. Scannell (Recalled) ... 1124
Exhibit Defendant #134—Contract between B. L. Fain and Wichita Royalty Company, dated 2/5/23 1133
Exhibit Defendant #135—Contract between W. H. Peckham and Wichita Royalty Company, dated 2/5/23 1135
Exhibit Defendant #136—Contract between B. L. Fain and Wichita Royalty Company, dated 6/4/23 1136

INDEX—Continued

PAGE

Statement of the Evidence—(Continued):
Evidence for Plaintiff—(Continued):
Testimony of E. E. Scannell—(Continued):
Exhibit Defendant #137—Assignment from W. H. Peckham to Wichita Royalty Company, dated 8/1/23 1139

Testimony of E. E. Scannell (Recalled) ... 1142
Exhibit Defendant #138—Check, E. E. Scannell, for Trustee to order of B. L. Fain for $12,000.00, dated 2/2/24 1147
Exhibit Defendant #139—Check, E. E. Scannell, for Trustee to order of G. W. Peckham for $9,250.00, dated 3/17/24 1147
Exhibit Defendant #140—Deposit Slip, G. W. Peckham in City National Bank for $11,321.82, dated 7/-2/24 1150
Exhibit Defendant #141—Check, E. E. Scannell, for Trustee to order of Security Nat'l Bank for $11,-000.00, dated 7/2/24 1151
Exhibit Defendant #142—Check, E. E. Scannell, for Trustee to order of Security Nat'l Bank for $10,-000.00, dated 7/26/24 1152
Exhibit Defendant #143—Deposit Slip for credit of G. W. Peckham of $10,000.00 with City Nat'l Bank, dated 7/25/24 1152
Exhibit Defendant #144—Remittance Letter, First Nat'l Bank to Stock-yards Nat'l Bank, dated 10/16/25 1158
Exhibit Plaintiff #193—Photostat of Form of Voucher of Wichita Royalty Company 1162

INDEX—Continued

PAGE

Statement of the Evidence—(Continued):
Evidence for Plaintiff—(Continued):
Testimony of E. E. Scannell—(Continued):
Exhibit Defendant #145—Warranty Deed, M. L. Porter and Wife to W. T. Knight, et al., dated 12/-1/25 1165
Exhibit Defendant #146—Acknowledgment of Receipt signed M. L. Porter, dated 12/15/25 1168
Exhibit Defendant #147—Check, G. W. Peckham to order of W. T. Knight for $427.50, dated 6/-22/29 1173
Exhibit Defendant #148—List of Oil Runs 1179
Exhibit Defendant #149—Check, E. E. Scannell for Trustee to order of City National Bank for $10,-000.00, dated 10/13/26 1180
Exhibit Defendant #150—Petition in case The City Nat'l Bank of Wichita Falls, Texas, vs. Wichita Royalty Co., et al., Texas State Court 1183
Exhibit Defendant #151—Assignment from Joseph M. Perkins to G. W. Peckham, dated 8/7/26 1215
Exhibit Defendant #152—Check, E. E. Scannell, for Trustee to order of Kilgore & Rogers for $200.00, undated 1225

Exhibit Defendant #153—Petition in case The State of Texas vs. County of Wichita, Texas State Court 1228

INDEX—Continued

PAGE

Statement of the Evidence—(Continued):
Evidence for Plaintiff—(Continued):
Testimony of E. E. Scannell—(Continued):
Exhibit "A"—Description of the Total Production, etc. 1232

Exhibits Plaintiff #194 & 195—List of Series of Checks 1253

Evidence for Defendants:
Testimony of J. T. Harrell (Recalled) 1264
Exhibit Defendant #154—Check, G. W. Peckham to order of Curlee Land for $2,567.75, dated 7/8/26 1268

Evidence for Plaintiff:
Testimony of C. A. Rogers 1282
J. T. Harrell (Recalled) ... 1286
Exhibit Defendant #155—Check, J. T. Harrell to order of Curlee Lands for $2,567.75, dated 7/8/26 1298
Exhibit Plaintiff #196—Description of Oil Properties owned Wichita Royalty Co., April 30, 1928 1300
Exhibit Defendant #156—Various Notes signed by G. W. Peckham, Trustee to order of City National Bank for various amounts and dates 1308

Testimony of J. T. Harrell (Recalled) 1310
Exhibit Defendant #157—List of Legal Services and other expenses, Wichita Royalty Company 1310

Testimony of H. H. Carson (Recalled) ... 1313

INDEX—Continued

PAGE

Statement of the Evidence—(Continued):
Evidence for Plaintiff—(Continued):
Testimony of H. H. Carson—(Continued):
Exhibit Defendant #158—Photostat of Liability Ledger The First National Bank, account of First Nat'l Bank 1315
Exhibit Defendant #159—Photostat of Liability Ledger The First National Bank, account of J. T. Harrell, et al. 1316, 1317
Exhibit Defendant #160—Photostat of Loans and Discounts 1318
Exhibit Defendant #161—Photostat of Bills Payable—First National Bank 1319

Exhibit Plaintiff #197—Photostat of Promissory Note, C. H. Clark, et al., to order of First National Bank of Wichita Falls for $50,000.00, dated 12/29/31 1321
Photostat of Promissory Note, C. H. Clark, et al., to order of First National Bank of Wichita Falls for $50,000.00, dated 12/29/31 1322
Exhibit Plaintiff #198—Debit Notice for $90.22, dated 12/31/31 1323
Exhibit Plaintiff #199—Certificate of Incorporation of The City National Bank of Wichita Falls, dated 12/15/33 1325

Testimony of E. A. Deaton 1326
Exhibit Plaintiff #200—Deposit Slip by Geo. W. Peckham with City Nat'l Bank of Commerce for $1,040.00, dated 1/17/23 1327

INDEX—Continued

PAGE

Statement of the Evidence—(Continued):
Evidence for Plaintiff—(Continued):
Testimony of E. A. Deaton—(Continued):
Exhibit Plaintiff #201—Deposit Slip by Geo. W. Peckham with City Nat'l Bank of Commerce for $1,046.66, dated 2/21/23 1327
Exhibit Plaintiff #202—Photostat of Daily Financial Statement of City National Bank of Wichita Falls, dated 2/18/27 1329
Exhibit Plaintiff #203—Photostat of Promissory Note, City National Bank to order of City National Bank in Wichita Falls, for $200,000.00, dated 10/10/36 1331
Exhibit Plaintiff #204—Statement of The City National Bank of Wichita Falls, 2/18/37 1332
Exhibit Plaintiff #205—List of Real Estate owned by the City National Bank of Wichita Falls, 2/18/37 1335
Exhibit Plaintiff #206—Lis Pendens Notice in case Wichita Royalty Co., et al., vs. City Nat'l Bank, et al., Texas State Court 1337
Exhibit Defendant #162—Photostat of Direct Liability Ledger between the two banks, The City National Bank of Wichita Falls and The City National Bank in Wichita Falls 1341
Exhibit Defendant #163—Photostat of Report of Liquidating Agent of The City National Bank of Wichita Falls for the period ended Dec. 31, 1936 1345

INDEX—Continued

PAGE

Statement of the Evidence—(Continued):
Evidence for Plaintiff—(Continued):
Testimony of P. H. Lambert 1346
Exhibit Plaintiff #207—Summary of funds deposited to the personal account of G. W. Peckham January 1, 1923, to November 6, 1929, made by P. H. Lambert & Co., Certified Public Accountants .. 1353
Exhibit Plaintiff #208—Reconcilement of the funds alleged to have been transferred to G. W. Peckham's Personal Bank Account with the amount of the funds actually transferred to his Account, January 1, 1923, to Nov. 7, 1929, made by P. H. Lambert & Co., Certified Public Accountants 1367
Exhibit Plaintiff #209—Description of Analysis of the Wichita Royalty Company's Balance sheet and indebtedness to the City Nat'l Bank for the years 1923-1929, inclusive, etc. 1377
Exhibit Plaintiff #210—Analysis of Source of funds applied by G. W. Peckham to pay his personal indebtedness to City National Bank, January 1, 1923, to November 17, 1925, made by P. H. Lambert & Co., Certified Public Accountants 1404
Exhibit Plaintiff #210a—Analysis of Source of Funds applied by G. W. Peckham to pay his personal indebtedness to City National Bank, November 17, 1925, to October 25, 1929, made by P. H. Lambert & Co., Certified Public Accountants 1424

INDEX—Continued.

PAGE

Statement of the Evidence—(Continued):
Evidence for Plaintiff—(Continued):
Testimony of P. H. Lambert—(Continued):
Exhibit Plaintiff #211—Photostat of Analysis of Source of the monies used by G. W. Peckham to pay his personal debt to the City Nat'l Bank, made by P. H. Lambert & Co., Certified Public Accountants 1442
Exhibit Plaintiff #213—Check, G. W. Peckham to order of A. F. Bowden or Bearer for $2,500.00, dated 2/9/24 1468
Exhibit Plaintiff #212—Application by G. W. Peckham of alleged Trust Funds from Wichita Royalty Co., October 8, 1925, to July 14, 1930 1476
Exhibit Plaintiff #212a—Application by G. W. Peckham of alleged Trust Funds from Wichita Royalty Co., January 1, 1923, to October 8, 1925 1494
Exhibit Plaintiff #214—Series of Checks all signed by G. W. Peckham for various amounts and dates 1507

Exhibit Plaintiff #215—Cashier's Check, City Nat'l Bank to order of Wichita Royalty Co., for $8,800.30, dated 8/14/23 1510
Check, G. W. Peckham to order of City Nat'l Bk. or bearer for $8,800.30, dated 8/14 23 1510

INDEX—Continued

PAGE

Statement of the Evidence—(Continued):
Evidence for Plaintiff—(Continued):
Testimony of P. H. Lambert—(Continued):
Exhibit Plaintiff #215—(Continued):
Cashier's Check, to order of G. W. Peckham for $1033.33, dated 7/25/23 1510
Check, G. W. Peckham to order of City Nat'l Bk. or bearer for $1033.33, dated 7/25/23 1511
Cashier's Check, City Nat'l Bk. of Commerce to order Wichita Royalty Co., for $1026.67, dated 6/29/23 1511
Check, G. W. Peckham to order of City Nat'l Bk. or bearer for $1026.67, dated 6/29/23 1511

Evidence for Defendants:
Testimony of J. T. Harrell (Recalled) 1513
Exhibit Defendant #164—Deposit Slip of Welch, Richardson & Kemp in City Nat'l Bank for $381.40, dated 1/8/26 1514

Exhibit Defendant #165—Check, J. T. Harrell to order of Curlee Land for $2,567.75, dated 1/8/26 ... 1515
Introduction of Books of Mr. Harrell 1517

Evidence for Plaintiff:
Testimony of Roy F. Bomar 1517
P. H. Lambert (Recalled) .. 1525
Exhibit Defendant #166—Check, G. W. Peckham to order of Ray & Massie for $2500.00, dated 5/6/25 (Same as Exhibit Pltf. #173) 1528

INDEX—Continued

PAGE

Statement of the Evidence—(Continued):
Evidence for Plaintiff—(Continued):
Testimony of P. H. Lambert—(Continued):
Exhibit Defendant #167—Check, G. W. Peckham to order of Ray & Massie for $1.92, dated 9/23/25 1530
Exhibit Defendant #168—Check, G. W. Peckham to order of Ray & Massie for $492.90, dated 6/-26/25 1530
Exhibit Defendant #169—Check, Ray & Massie to order of J. C. Strauss, R. S. Allen & Cliff Mooers for $30,000.00, dated 5/-2/25 1531
Exhibit Defendant #170—Three Deposit Slips by Ray & Massie in The Security Nat'l Bank for various amounts and dates 1531
Exhibit Defendant #171—Ray & Massie Expense Account Routon Well #1 (Dry Hole) 1534

Evidence for Defendants:
Testimony of E. E. Scannell (Recalled) ... 1554
Exhibit Defendant #172—Memorandum making explanation of certain checks and items, etc. 1555
Exhibit Defendant #173—Salary Account of E. E. Scannell, Trustee 1564
Exhibit Defendant #174—Wichita Royalty Company Analysis of Cash on Hand 1567
Exhibit Defendant #175—Description of Checks given in explanation of jointly owned block of city lots in Block 44-A, Highland Addition to City of Wichita Falls by G. W. Peckham, and E. E. Scannell, etc. 1571

INDEX—Continued

PAGE

Statement of the Evidence—(Continued):
Evidence for Defendants—(Continued):
Testimony of E. E. Scannell—(Continued):
Exhibit Defendant #176—Receipts from the District Court of Wichita County, etc., (Withdrawn) 1574
Exhibit Defendant #177—Explanation of checks of G. W. Peckham turned over to E. E. Scannell, and checks of E. E. Scannell in explanation attached 1576
Exhibit Defendant #178—Explanation of Personal Checks attached of E. E. Scannell given on Marlborough Addition Lots 1587
Exhibit Defendant #179—Explanation of tracing payments on G. W. Peckham's House at 3200 Peckham, checks issued by E. E. Scannell 1592
Exhibit Defendant #180—Explanation regarding the Lillibridge Matters 1597
Exhibit Defendant #181—Letter, Wichita Royalty Co. to Miss Cleo Bowers, Court Reporter, dated 2/13/37 1593
Letter, Mrs. Cleo Bowers Erwin, Court Reporter to Wichita Royalty Co., dated 2/13/37 .. 1598
Exhibit Defendant #182—Deposit Slip, Wichita Royalty Co. in the Security Nat'l Bank for $700.00, dated 2/2/26 1604
Exhibit Defendant #183—Letter, Treasury Dept., Internal Revenue Service to Wichita Royalty Co., dated 2/5/26 1605

INDEX—Continued

PAGE

Statement of the Evidence—(Continued):
Evidence for Defendants—(Continued):
Testimony of E. E. Scannell—(Continued):
Exhibit Defendant #184—Deposit Slip Wichita Royalty Co. in City National Bank for $7083.40, dated 2/10/26 1606
Exhibit Plaintiff #216—Corporation Income and Excess-Profits Tax Return of Wichita Royalty Co., for Calendar Year 1935 or Fiscal Year begun June 1, 1935, and ended May 31, 1936 1610
Exhibit Plaintiff #217—Corporation Income and Excess-Profits Tax Return of Wichita Royalty Co., for Calendar Year 1934 or Fiscal year begun June 1, 1934, and ended May 31, 1935 1615
Exhibit Plaintiff #218—Corporation Income and Excess-Profits Tax Return of Wichita Royalty Co., for Fiscal Year 1934, Fiscal Year begun June 1, 1933, and ended May 31, 1934 1619
Exhibit Plaintiff #219—Corporation Income Tax Return of Wichita Royalty Co., for Fiscal Year 1933, page 1 of Return Fiscal Year begun June 1, 1932, and ended May 31, 1933 1623
Exhibit Plaintiff #220—Corporation Income Tax Return of Wichita Royalty Co., for Fiscal Year 1932, Fiscal Year begun June 1, 1931, and ended May 31, 1932 1627

INDEX—Continued

PAGE

Statement of the Evidence—(Continued):
Evidence for Defendants—(Continued):
Testimony of E. E. Scannell—(Continued):
Exhibit Plaintiff #221—Corporation Income Tax Return of Wichita Royalty Co., for Fiscal Year 1931, Fiscal Year begun June 1, 1930 and ended May 31, 1931 .. 1631

Evidence for Plaintiff:
Testimony of O. C. Dickson 1643
Exhibit Defendant #185—Mineral Deed, C. W. Murchison, et al., Trustees of Murchison and Fain Oil Co. to G. W. Peckham, dated 6/20/25 1644

Evidence for Defendants:
Testimony of E. E. Scannell (Recalled) .. 1645
M. E. Wallace 1648
Exhibit Defendant #186—Index and Report of Analysis of Inter-Related Accounts of Wichita Royalty Co., City Nat'l Bank of Wichita Falls; C. W. Peckham; J. T. Harrell and W. R. Peckham ... 1651

Exhibit Defendant #187—Index and Report of Wichita Royalty Co., in account with City Nat'l Bank of Wichita Falls, Period of April 10, 1923, to November 1, 1929 .. 1682
Report of Wichita Royalty Co., in account with G. W. Peckham, Period of March 10, 1923, to November 1, 1929 1701

INDEX—Continued

PAGE

Statement of the Evidence—(Continued):
Evidence for Defendants—(Continued):
Testimony of E. E. Scannell—(Continued):
Exhibit Defendant #187—(Cont'd):
Photostat of Payments to the City National Bank of Trust Funds of G. W. Peckham's Personal Debts out of the commingled account 1704
Analysis of G. W. Peckham's Commingled Account in the City National Bank—Wichita Falls, Nat'l Bank—Wichita Falls, Period of May 11, 1923, to June 22, 1923 1705
Analysis of G. W. Peckham's Commingled Account in the City Nat'l Bank—Wichita Falls, Period of Sept. 1, 1923, to October 16, 1923 1708
Analysis of G. W. Peckham's Commingled Account in the City Nat'l Bank—Wichita Falls, Period of Feb. 2, 1924, to Feb. 5, 1924 1710
Analysis of G. W. Peckham's Commingled Account in the City Nat'l Bank—Wichita Falls, March 18, 1924 1711
Analysis of G. W. Peckham's Commingled Account in the City Nat'l Bank—Wichita Falls, May 5, 1925, to May 12, 1925 1712
Analysis of G. W. Peckham's Commingled Account in the City Nat'l Bank—Wichita Falls, Period of June 2, 1925, to June 11, 1925 1714

INDEX—Continued

PAGE

Statement of the Evidence—(Continued):
Evidence for Defendants—(Continued):
Testimony of E. E. Scannell—(Continued):
Exhibit Defendant #187—(Cont'd):
Analysis of G. W. Peckham's Commingled Account in the City Nat'l Bank—Wichita Falls, Period of January 1, 1926, to February 2, 1926 1715
Analysis of G. W. Peckham's Commingled Account in the City Nat'l Bank—Wichita Falls, Period of April 3, 1926, to May 4, 1926 1717
Analysis of G. W. Peckham's Commingled Account in the City Nat'l Bank—Wichita Falls, Period of August 2, 1926 to August 10, 1926 1718
Analysis of G. W. Peckham's Commingled Account in the City Nat'l Bank—Wichita Falls, November 20, 1926 1719
Analysis of G. W. Peckham's Commingled Account in the City Nat'l Bank—Wichita Falls, January 19, 1927 1720
Analysis of G. W. Peckham's Commingled Account in the City Nat'l Bank—Wichita Falls, March 16, 1927 1721
Analysis of G. W. Peckham's Commingled Account in the City Nat'l Bank—Wichita Falls, Period of May 6, 1927, to May 9, 1927 1722

INDEX—Continued

PAGE

Statement of the Evidence—(Continued):
Evidence for Defendants—(Continued):
Testimony of E. E. Scannell—(Continued):
Exhibit Defendant #187—(Cont'd):
Analysis of G. W. Peckham's Commingled Account in the City Nat'l Bank—Wichita Falls, Period October 15, 1927, to October 19, 1927 1723
Analysis of G. W. Peckham's Commingled Account in the City Nat'l Bank—Wichita Falls, February 15, 1928 1724
Analysis of G. W. Peckham's Commingled Account in the City Nat'l Bank—Wichita Falls, Period of July 9, 1928, to Sept. 27, 1928 1725
Analysis of G. W. Peckham's Commingled Account in the City Nat'l Bank—Wichita Falls, Period of December 31, 1928, to January 12, 1929 1728
Analysis of G. W. Peckham's Commingled Account in the City Nat'l Bank—Wichita Falls, Period of March 6, 1926 to July 23, 1926 1729

Statement made by Mr. Morrow regarding what is known as the Routon Royalty, etc. 1751
Exhibit Defendant #188—Statement showing the Volume of business handled by the Tellers of the City Nat'l Bank, etc. 1753
Exhibit Defendant #189—Statement of Total Deposits, City National Bank 1755

INDEX—Continued

PAGE

Statement of the Evidence—(Continued):
Evidence for Defendants—(Continued):
Testimony of J. T. Harrell 1756
Exhibit Defendant #190—Letter, Secretary of State of Texas to Kilgore & Rogers, dated 2/20/37 .. 1757

Evidence for Plaintiff:
Testimony of E. A. Deaton (Recalled) 1760
Exhibit Plaintiff #222—Cashier's Check, City Nat'l Bank in Wichita Falls to order of Secretary of State of Texas for $257.40, dated 11/4/35 1761
Cashier's Check, to order of Secretary of the State of Texas for $1.95, dated 11/26/35 1762
Receipts from Secretary of State of Texas to Texas Investment Company 1762
Letter, Secretary of State of Texas to Texas Investment Co., dated 11/22/35 1764
Letter, Secretary of State of Texas to Texas Investment Co., dated 12/10/36 1765
Testimony of Guy Rogers 1766
Exhibit Defendant #191—Recapitulation, Receipts and Disbursements 1770
Statement, Guy Rogers in Account with Wichita Royalty Company 1770
Statement, Kilgore & Rogers in account with Wichita Royalty Company 1772

INDEX—Continued

PAGE

Statement of the Evidence—(Continued):
Evidence for Plaintiff—(Continued):
Testimony of Guy Rogers—(Continued):
Exhibit Defendant #192—Mandate of Supreme Court of Texas, issued May 13, 1936 1781
Exhibit Defendant #193—Contingent Contract of Kilgore and Rogers, with Wichita Royalty Company 1783

Questions propounded to W. H. Peckham on former trial, etc. 1786
Exhibit Defendant #195—Interrogatories 58, 59 and 81 propounded to J. J. Perkins and his answers thereto on 9/25/36 1787
Exhibit Defendant #194—Recorded Disbursements made by the Wichita Royalty Co. for Legal Services, Auditing Services, and to the Trustee from Dec. 1, 1929, to January 7, 1937 1789

Evidence for Defendants:
Exhibit Defendants "A"—Photostat of Deposit Account of W. S. Curlee with City National Bank 1798
Exhibit Defendants "B"—Photostat of Deposit Account of Welch Richardson & Kemp, Regular Account with City Nat'l Bank 1799
Exhibit Defendants "C"—List of Checks numbered from 1 to 1339 for various amounts and dates 1801
Exhibit Defendants "D"—Data Income Tax Return 1926 in connection with income tax report of J. T. Harrell, etc. 1813

INDEX—Continued

PAGE

Statement of the Evidence—(Continued):
Evidence for Defendants—(Continued):
Exhibit Defendants "E"—Plaintiff's First Amended Original Petition in case City Nat'l Bank of Wichita Falls vs. Wichita Royalty Company, et al., Texas State Court 1829
Exhibit Defendants "F"—Answer of Plaintiff to cross-action of defendant, Wichita Royalty Co., in case The City Nat'l Bank of Wichita Falls vs. Wichita Royalty Co., et al., Texas State Court 1835
Exhibit Defendants "G"—Answer of defendant J. T. Harrell to Amended Answer and Cross-Action of defendant Wichita Royalty Co., in case The City Nat'l Bank of Wichita Falls vs. Wichita Royalty Company, et al., Texas State Court 1856
Exhibit Defendants "H"—Opinion of the Supreme Court of Texas in case Wichita Royalty Co., et al., vs. The City National Bank of Wichita Falls, et al., Supreme Court of Texas 1884
Opinion of the Supreme Court of Texas on motion for rehearing in case Wichita Royalty Co., et al., vs. The City Nat'l Bank of Wichita Falls, et al., Texas Supreme Court 1912
Exhibit Defendants "I"—Voucher on Trust Check No. 427 1914
Exhibit Defendants "J"—Royalty Assignment C. W. Murchison, et al., Trustees for Murchison & Fain Oil Co., to G. W. Peckham, dated 6/20/25 .. 1915
Evidence for Plaintiff:
Testimony of E. A. Deaton 1919

INDEX—Continued

PAGE

Order approving Statement of the Evidence 1922
Opinion of the Court 1922
Final Decree, entered 4/9/37 1931

Report of E. A. Deaton, Special Commissioner 1934
Exhibit "A"—Statement of City National Bank of Wichita Falls, May 29th, 1937 1937

Objections of defendant Wichita Royalty Company and E. E. Scannell, Trustee, to Report of Special Commissioner 1946
Order entered 6/10/37 confirming Report of E. A. Deaton, Special Master 1948
Petition for Appeal 1950
Assignment of Errors 1952
Order allowing appeal and fixing amount of Bond 1963
Appeal Bond 1964
Order transmitting Original Exhibits to C. C. A. 1966
Praecipe for Transcript and acknowledgment of Service thereon 1967
Joint Agreement of Counsel to shorten Record 1970

Proceedings in State Court:

Second Amended Original Answer, Cross Action and Interpleader of defendant Wichita Royalty Company 1972
Exhibit—Summary of Pleading Wichita Royalty Co. in account with George W. Peckham, etc. 2012

Judgment 2015
Citation and Sheriff's Return thereon 2020
Notice to serve non-resident defendants, Hazel D. Peckham, et al. 2022

INDEX—Continued

PAGE

Proceedings in U. S. District Court:

Interrogatories Propounded to J. J. Perkins by the Wichita Royalty Co., after Removal under Equity Rule 58 2025
Objections of City National Bank of Wichita Falls to said Interrogatories 2038
Order of Court on hearing of Objections to Interrogatories 2043
Answer of J. J. Perkins to Interrogatories 2044
Answer of City National Bank of Wichita Falls, et al., to motion to Remand filed by Wichita Royalty Co., et al. 2054

Cross-Appeal Papers:

Petition for Cross-Appeal 2061
Order allowing Cross-Appeal 2062
Assignment of Errors on Cross-Appeal 2063
Praecipe on Cross-Appeal and acknowledgment of service thereon 2065
Clerk's Certificate 2068
Citations 2068

Proceedings in U. S. C. C. A., Fifth Circuit 2069
Minute entry of argument and submission 2069
Opinion of the court, Sibley, J. 2069
Judgment 2081
Petition for rehearing 2083
Order denying rehearing 2085
Motion for leave to file petition for rehearing and petition for rehearing 2087
Opinion, Sibley, J., on second motion for rehearing 2092
Order denying second motion for rehearing 2094
Clerk's certificate 2094
Order allowing certiorari 2095

CAPTION.

BE IT REMEMBERED, that at a regular term of the United States District Court in and for the Northern District of Texas, begun and holden at Wichita Falls, Texas, on the 22nd day of March, A. D. 1937, and which said term adjourned on the 9th day of April, A. D. 1937, the Honorable William H. Atwell, United States District Judge for the Northern District of Texas, presiding, the following proceedings were had and the following cause came on for trial and was tried, to-wit:

CITY NATIONAL BANK OF WICHITA FALLS, TEXAS,

Plaintiff,

versus No. 358, In Equity.

WICHITA ROYALTY COMPANY and E. E. SCANNELL, TRUSTEE,

Defendants.

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2 PLAINTIFF'S SECOND AMENDED ORIGINAL PETITION.

Filed May 11, 1936.

In the District Court of Wichita County, Texas, for the 78th Judicial District.

City National Bank of Wichita Falls, Texas,

vs. No. 24549-B.

Wichita Royalty Company, et al.

To the Honorable Judge of Said Court:

The City National Bank of Wichita Falls, Texas, a corporation duly incorporated, comes now and, with leave

of the Court first had and obtained, files its second amended original petition, in lieu of and as a complete substitute for its original petition heretofore filed, and for such amended petition pleads as follows:

I.

That the City National Bank of Wichita Falls, Texas, is a national banking association, but it is now in liquidation, pursuant to the United States statutes regulating the liquidation of national banks, and E. A. Deaton is its duly and legally appointed liquidating agent. It comes and complains of the Wichita Royalty Company, a common-law trust, whose sole trustee is E. E. Scannell, and E. E. Scannell, individually, and also complains of the following additional parties, hereinafter styled defendants, namely, Guy Rogers, individually and as trustee under the will of L. B. Rogers, deceased, Charles L. Black, W. H. Peckham, administrator of the estate of G. W. Peckham, deceased, the Humble Oil & Refining Company, a corporation, the Continental Oil Company, a corporation, and The Texas Company, a corporation, all styled defendants herein, and with respect to the Court the plaintiff shows:

II.

That the Wichita Royalty Company is a common-law trust, operating under a declaration of trust filed and recorded in the Deed Records of Wichita County, Texas,
3 and E. E. Scannell is the trustee named therein and the said E. E. Scannell is a resident citizen of Wichita County, Texas; that Guy Rogers is a resident of Wichita County, Texas, and is sued herein individually and as trustee under the will of L. B. Rogers, deceased; that Charles L. Black is a resident citizen of Travis County, Texas; that W. H. Peckham is the duly appointed administrator of the estate of G. W. Peckham,

deceased, and resides in Wichita County, Texas; that the Humble Oil & Refining Company, the Continental Oil Company, and The Texas Company are each corporations, duly incorporated, with an office and place of business in Wichita County, Texas, and having agents in said county and state upon whom service of citation can be had.

III.

Plaintiff further alleges that the Wichita Royalty Company is a form of association, as aforesaid, commonly known as a common-law trust, the sole management and control of the same being vested under said declaration of trust in a sole trustee, who is E. E. Scannell and who, together with the defendant Guy Rogers, as his attorney, has, from the dates hereinafter alleged, exercised exclusive management of the affairs of said association; that said association has certain shareholders, none of whom reside in the State of Texas, unless it is the said E. E. Scannell, and no process can reach said shareholders under the laws of the State of Texas, so that no judgment can be enforced against said shareholders for the collection of the plaintiff's debt hereinafter alleged.

IV.

That on the 26th day of June, A. D. 1930, the defendant E. E. Scannell, acting as sole trustee for the Wichita Royalty Company and for a valuable consideration, made, executed, and delivered to the plaintiff his certain promissory note in the principal sum of $22,000, due 60
4 days after date and payable to the order of the plaintiff, with interest from date until paid at the rate of eight per cent per annum, which note further provides for 10% attorney's fees, if sued upon or placed in the hands of an attorney for collection and which note is a renewal and extension of an indebtedness owing by

the defendant Wichita Royalty Company to the plaintiff herein for money borrowed at the time G. W. Peckham was the sole trustee and E. E. Scannell was the secretary and treasurer of the said Wichita Royal Company, which money was borrowed in the due and regular course of business, and this note is a renewal and extension of the original notes for which said money was originally borrowed.

V.

That said note is long past due and unpaid; that the plaintiff has placed said note in the hands of its attorneys, who are bringing this suit, and has agreed to pay said attorneys the 10% provided for in said note as attorney's fees, and that the defendant Wichita Royalty Company, though often requested, has wholly failed to pay said note, or any part thereof, to plaintiff's damage in the sum of $40,000.

VI.

This plaintiff says that the Wichita Royalty Company is wholly insolvent; that it is not now and has not been since the maturity of said note, possessed of sufficient assets and properties to pay any substantial part of said indebtedness owing to the plaintiff; that none of its shareholders, unless it be Scannell, who is also unable to pay said indebtedness, reside within the State of Texas; that they are all non-residents of the State of Texas and that no property of the shareholders can be reached by this plaintiff for the satisfaction of its indebtedness, and it is therefore relegated and has at all times been relegated solely to the assets owned and held by the Wichita Royalty Company for the satisfaction of the debts owing by the Wichita Royalty Company to this plaintiff.

VII.

The declaration of trust, which is duly recorded in Volume ...., Page ...., of the Deed Records of Wichita

County, Texas, to which reference is here made, creates a trust for the benefit of the creditors of the Wichita Royalty Company upon the assets of same and which provides as follows:

(A) That the trustee (who is E. E. Scannell) shall hold all of the funds and properties in trust for the purposes and with the powers and limitations set out in the declaration of trust;

(B) It provides for the management of the affairs of said association or trust by one trustee, giving him exclusive power and authority in such management, and provides that all title acquired shall be held in trust by such trustee in his capacity as such;

(C) That any debt incurred by the trustee shall be a charge on the property of the trust in preference to the claim, or claims, of any stockholder as such and that all of the funds and properties of the trust of every character shall stand primarily charged with the burden of paying any claim or money demand established or existing on account of the operations and business of said trust, whether founded on contract or tort, to the end that the stockholders may be protected from personal liability on account thereof;

(D) That said articles of association contained other provisions. It provided for a capital stock of one million dollars; that certificates of beneficial ownership should be issued to shareholders and that the assets of said association should be impressed with a trust and lien for the payment of all the obligations of said trust estate. It contained other provisions, the effect of which was to create for the benefit of the creditors of said association ratably and alike, especially in case of insolvency, a trust fund upon all of the assets of said association and it was therefore the duty of the trustee administering said assets to

treat the same as a trust fund for the benefit of
6 all the creditors of said association ratably and alike, and to suffer no preferential transfers or payments, a violation of which duty would be an act of bad faith on the part of the trustee.

VIII.

That the indebtedness herein sued for is an indebtedness incurred by the trustee in the conduct of the business of said trust and pursuant to the terms and provisions of the articles of association aforesaid.

IX.

That this suit upon this indebtedness was filed on October 11, 1930; that thereafter E. E. Scannell employed the defendant Guy Rogers as his attorney to represent him in said suit, and, since the filing of this suit and prior thereto, this plaintiff alleges that the said E. E. Scannell, in co-operation with Guy Rogers, has been continuously, assiduously, and intentionally diverting the properties and assets of the defendant Wichita Royalty Company from the purposes of said trust and for the purpose of placing the same beyond the reach of the plaintiff herein and the other creditors of the Wichita Royalty Company; that, while the said E. E. Scannell has been purporting to represent the shareholders in an effort to defeat liability to this plaintiff, nevertheless he has been representing himself individually and has been receiving and converting to his own use the funds and monies of said trust and applying the same for purposes not authorized by said trust, and has co-operated with the defendant Guy Rogers in placing the properties and assets of the Wichita Royalty Company beyond the reach of its creditors. In this connection, the plaintiff alleges that certain properties owned by the Wichita Royalty Company are producing royalties, the amount of the

income therefrom being unknown to the plain-
7 tiff, but being well known to the defendants, particularly to the defendant E. E. Scannell, who, with the defendant Guy Rogers, has had charge of all the books and records of the Wichita Royalty Company; that the income from said properties from the date of the filing of said suit has averaged as much as, if not in excess of, $500 per month and that said properties during the period of said litigation have produced substantial sums of money, sufficient, in the judgment of the plaintiff herein, to pay its note and indebtedness, but that all of said funds have been received and collected by the defendant E. E. Scannell and/or his attorney, Guy Rogers, and have been used by said defendants for purposes unauthorized by said declaration of trust. In this connection, the plaintiff alleges upon information and belief that it is the intent of the said defendant E. E. Scannell to use, conceal, and appropriate said funds and the income therefrom so that the assets and properties of the said defendant Wichita Royalty Company cannot and will not be forthcoming or available for the satisfaction of the plaintiff's indebtedness herein, should it be finally determined that the defendant Wichita Royalty Company is indebted to this plaintiff, and to this end the defendants E. E. Scannell and Guy Rogers have conspired and cooperated together in the receipt, collection, and disbursement of all of the income of the Wichita Royalty Company during the whole period of this litigation and are now receiving, collecting and using said income for purposes other than for the satisfaction of this indebtedness or the protection of this creditor, or for the ultimate payment of this debt, should it be ultimately decided that the plaintiff is entitled to recover herein.

8 X.

That, in addition to the appropriation by E. E. Scannell of the income, revenues, receipts, and funds received by the Wichita Royalty Company, the said E. E. Scannell,

acting with the defendant Guy Rogers, have undertaken to and agreed to so place the assets and properties of the Wichita Royalty Company beyond the reach of this creditor, in the event judgment is finally recovered against said company.

XI.

That at the time of the execution of said note and the filing of this suit the Wichita Royalty Company owned valuable royalties, some of which were located and situated in the State of Oklahoma and are described as follows:

In Okmulgee County.

1st—An undivided 1/8th overriding royalty interest in the oil, gas and minerals on the South 1/2 of the S. W. 1/4 of Sec. 34, Township 12 North, Range 12 East, known as the Ellis Holmes Farm in said county, fully described in an instrument dated November 18, 1922, executed by B. L. Fain in favor of First Party herein, which instrument was filed for record Sept. 17, 1924, at one o'clock p. m. and recorded in the Misc. Records at pages 404-5 of Vol. 2 of the Records of said Okmulgee County, reference to which is made for all purposes.

2nd—An undivided 1/4 of the 1/8th royalty on the South 1/2 of the Southwest 1/4th of Sec. 34, Township 12 N., Range 12 E., known as the Ellis Holmes Farm, said interest being fully described in an instrument executed by W. H. Peckham in favor of First Party herein on the 4th day of April, 1923, recorded in Book M 259, Page 261, of the Records of said Okmulgee County, reference to which is made for all purposes.

3rd—18/40ths of the 1/8th royalty on the North 1/2 of the S. W. 1/4 of Sec. 34, Township 12 North, Range

12 E., known as the Ellis Holmes Farm in said county, said interest being fully described in an instrument dated August 1, 1923, executed by W. H. Peckham in favor of First Party herein, which instrument is duly recorded in Book M 259 at Page 262 of the Records of said County, reference to which is made for all purposes.

9 In Noble County.

4th—5/32nds of the 1/8th royalty on the N. W. 1/4 of the S. E. 1/4th of Sec. 10, Township 24 North, Range 1 West, in said county, said interest being fully described in Vol. M-20, at page 466 and in Vol. 20 at 344 and Vol. M-20 at 462 of the Records of said Noble County, reference to which is made for all purposes.

5th—2/72nds of the 1/8th fee royalty on the N. W. 1/4th of Sec. 15, Township 24 N., Range 1 W., known as t' J. W. See farm in said County, said interest being fully described in instruments recorded in Vol. M-20 at page 349 and in Vol. M-20 at page 464 of the Records of said County respectively, reference to which is made for all purposes.

6th—1/256th of the 1/8th fee royalty on lots 1 and 2 and the south 1/2 of the Northeast 1/4 Sec. 3, Township 24 N., Range 1 W., known as the J. Carmichael Farm in said county, which interest is fully described in an instrument recorded in Vol. M-24 at page 10 of the Records of said county, reference to which is made for all purposes.

In Kay County.

7th—1/320th of the 1/8th fee royalty on the N. W. 1/4 of Sec. 34, Township 25 N., Range 1 W., in said county known as the Fred A. Beverlin Farm, said interest being fully described in instruments recorded in Vol. 97 at page

257 of the Records of said County, reference to which is made for all purposes.

8th—3/640ths of the 1/8th fee royalty on the east 1/2 of the Northeast 1/4 Sec. 34, Township 25 N., Range 1 W., known as the W. F. McDaniel farm in said county, which interest is fully described in an instrument recorded in Vol. 97 at page 257 of the Records of said county, reference to which is made for all purposes.

9th—1/64th of the 1/8th fee royalty on the west 1/2 of the N. E. 1/4 of Sec. 34, Township 25 N., Range 1 W., known as the C. W. Goltry farm in said county, which interest is fully described in instruments recorded in Vol. 97 at page 257 of the records of said county, reference to which is made for all purposes.

together with all the improvements thereon and appurtenances thereto belonging.

That said royalties were and are of the reasonable value of at least $5,000; that, in addition to receiving the income and revenues therefrom, the said E. E. Scannell, acting together with the defendant Guy Rogers, have mortgaged said Oklahoma royalties to Guy Rogers and have transferred the income therefrom to the said Guy Rogers, as shown by a transfer and mortgage marked Exhibit "A" and made a part of this petition.

XII.

That the defendant Wichita Royalty Company also owned other valuable royalties located in the State of Texas, an itemized list and description thereof being attached hereto, marked Exhibit "B" and made a part hereof.

XIII.

That after the mortgaging of the Oklahoma properties, the defendant E. E. Scannell, acting in conjunction with

the defendant Guy Rogers, made, executed, and delivered a deed of trust upon all of the remainder of the royalties and assets owned by the said Wichita Royalty Company and made, executed, and delivered to Guy Rogers a transfer and assignment of all the oil and gas and proceeds therefrom produced from said properties, and did thereafter cause a purported foreclosure to be made under said deed of trust; that said deed of trust made no definite description of any properties, but contained a description as follows:

"All and singular the property of the said Wichita Royalty Company situated in the Counties of Archer, Young, Gray and Wheeler, Texas, whether such property be personal or real and whatsoever its description, including the land, interest in land, leases, royalties, mineral estates, leasehold interests, oil and gas rights, minerals, monies due from the sale of minerals, accounts receivable, choses in action, bonuses, rentals and monies due or to become due in lieu of royalty."

That said deed of trust was executed by E. E. Scannell upon the advice of the defendant Guy Rogers and to secure an alleged indebtedness to the defendant Charles L. Black; that, in order to place said properties beyond the reach of this creditor, the defendants E. E. Scannell and Guy Rogers caused a purported sale to be made of all and singular all of said properties by the trustee named in said deed of trust, which trustee was Ray Bland, an attorney associated with the defendant Guy Rogers, and on the 7th day of August, A. D. 1934, the said trustee purported to sell all of the above described properties, including the royalties, wherever situated, all monies due and impounded of every kind and description owned by the Wichita Royalty Company, which sale was purported to have been made at the Courthouse door of Archer County, Texas, and at which sale the defendant Guy Rogers, purporting to act as trustee under the will of L. B. Rogers, his deceased

father, and for the sum and price of $250, bid all of said properties in and caused a deed to be made to him as trustee by the said Ray Bland, trustee under the deed of trust, and caused said trustee's deed to be filed for record in the various counties wherein the royalties were located and situated, including Gray and Wheeler Counties, Texas. A copy of said Trustee's Deed is attached to this petition, marked Exhibit "C" and made a part hereof.

XIV.

That said sale and foreclosure was made, the plaintiff alleges upon information and belief, for the purpose of placing said property beyond the reach of this creditor and in violation of the terms of the declaration of trust and articles of association under which the defendant E. E. Scannell was acting; that the sale was made under a deed of trust given to secure Charles L. Black in the payment of $5,000, or so much thereof as might equal the reasonable value of the professional services to be performed by the said Charles L. Black on behalf of the Wichita Royalty Company, and was given to secure the defendant Guy Rogers in the payment of Court costs and expenses growing out of the litigation herein; that the properties conveyed by the said deed of trust were of the reasonable value of $15,000; that these properties, including the Gray and Wheeler County properties, which royalties had theretofore been disclaimed by the Wichita Royalty Company in a pleading filed in this proceeding by the defendant Guy Rogers, wherein it was claimed that George W. Peckham, a former trustee, was acting for himself individually in the purchase of the royalties in Wheeler and Gray Counties, but that said allegation was made prior to the time the royalties became producing royalties in Wheeler and Gray Counties and after oil was discovered upon said properties and they became valuable properties, which was after the election of the said defendant, Wichita

Royalty Company, to disclaim same, nevertheless they undertook to mortgage all of said royalties in Wheeler and Gray Counties to Charles L. Black and to cause a foreclosure of said mortgage to be made, and a sale of said royalties to be made and a purchase thereof by the defendant Guy Rogers, acting as trustee under the will of L. B. Rogers, deceased, which sale also included all impounded funds and which sale was made for the grossly inadequate sum of $250, which this plaintiff alleges was never actually paid and which sale was void and fraudulent as to this plaintiff.

XV.

That at the time of the various transactions above named, namely, the execution of the mortgage upon the Oklahoma properties, the execution of the deed of trust upon the remaining properties in Texas, the transfer and assignment of the oil and gas from said properties unto the said Guy Rogers, and the sale under the deed of trust by Ray Bland, Trustee, the Wichita Royalty Company was wholly insolvent and was unable to pay its debts; that its assets constituted a trust fund for the ratable
13 payment of all of its indebtedness, including the indebtedness owing to this plaintiff, and that the trustee was without power to prefer one creditor over another or to execute any mortgage or deed of trust on said properties, but was in duty bound in equity to hold said properties for the ratable payment of all of the creditors of the said Wichita Royalty Company and to apply the proceeds and revenues therefrom for said purpose; that by reason of the foregoing facts the defendants Wichita Royalty Company, E. E. Scannell, and Guy Rogers committed a breach of trust, in that the funds and properties of the Wichita Royalty Company were trust funds and they were thereby wrongfully diverted from the ratable payment of all of the indebtedness due and owing by the Wichita Royalty Company.

XVI.

The plaintiff further alleges that long prior to the execution of the deed of trust there was standing in the name of either G. W. Peckham or the Wichita Royalty Company certain royalty interests in Wheeler and Gray Counties, Texas, as follows, to wit:

An undivided one-eighth interest in all of the oil, gas and other minerals, including 1/8 royalty in all oil and gas leases on the following lands in Gray County, Texas, to wit:

The South 1/2 of Sec. 61, Block 25, H. & G. N. Ry. Co. Survey, Gray County, Texas, containing 320 acres, more or less;

The Northwest 1/4 of Sec. 60, Block 25, H. & G. N. Ry. Co. Survey, Gray County, Texas, including 1/8 of the 1/8 royalty interest, containing 160 acres, more or less.

An undivided 1/4 interest in all of the oil, gas, and other minerals, including 1/4 of the 1/8 royalty interest reserved in any oil and gas lease on the following additional lands in Gray County, Texas, to wit:

14 The West ½ of the Southeast ¼ and the Northeast ¼ of the Southeast ¼ of Section 59, Block 25, H. & G. N. Ry. Company Survey, Gray County, Texas, containing 120 acres, more or less.

Also the following royalties in Wheeler County, Texas:

An undivided one-fourth interest in all of the oil, gas, and other minerals, including one-fourth of the one-eighth royalty interest reserved in all oil and gas leases on the following lands in Wheeler County, Texas:

The West ½ of the Southeast ¼ of Section 54, Block 24, H. & G. N. Ry. Co. Survey, containing 80 acres, more or less;

The East ½ of Section 54, Block 24, H. & G. N. Ry. Co. Survey, Wheeler County, Texas, containing 320 acres, more or less.

An undivided ½ interest in and to all of the oil, gas and other minerals, including one-half of the one-eighth royalty reserved in any oil and gas leases on the following lands in Wheeler County, Texas, to wit:

The Northeast ¼ of Section 47, Block 24, H. & G. N. Ry. Co. Survey, in Wheeler County, Texas, containing 160 acres, more or less;

The East ½ of Section 57, Block 24, H. & G. N. Ry. Co. Survey, Wheeler County, Texas, containing 320 acres, more or less;

The North ½ of Section 45, Block 24, H. & G. N. Ry. Co. Survey, in Wheeler County, Texas, containing 320 acres, more or less.

That there was also standing in the name of G. W. Peckham an undivided 15/32nds interest in the oil, gas, and other minerals in the Northeast ¼ of the Northeast ¼ of Section 47, Block 24, H. & G. N. Ry. Co. Survey, Wheeler County, Texas; an undivided 1/64th interest in the oil gas, and other minerals in the West ½ of the Southeast ¼ of Section 43, Block 24, H. & G. N. Ry. Co. Survey, Wheeler County, Texas; and an undivided 7/64ths interest in the East ½ of Section 54, Block 24, H. & G. N. Ry. Co. Survey, Wheeler County, Texas, and an undivided 1/16th interest in the Northwest ¼ of Section 44, Block 24, H. & G. N. Ry. Co. Survey, Wheeler County, Texas. That all of said royalties were purchased by George Peckham while he was acting as trustee for the Wichita Royalty Company and that all of said royalties, the plaintiff alleges upon information and belief, were purchased for the benefit of the Wichita Royalty Company by George Peckham, including those standing in the name of George Peckham not assigned.

XVII.

That it was alleged by the defendant Wichita Royalty Company in a pleading filed herein long prior to the discovery of oil on said lands that said royalties in Wheeler and Gray Counties were purchased by George Peckham from himself at a secret profit to himself and, under such circumstances and with knowledge on the part of the plaintiff bank, charged the said bank with notice that George W. Peckham, as trustee, was dealing with himself individually, all of which allegations were denied and are denied by this plaintiff, but in said pleading filed by the defendant Wichita Royalty Company before the discovery of oil on said Wheeler and Gray County properties and before the same became valuable elected to rescind said sale, and tendered back all of the Gray County and Wheeler County royalties and the said defendant Wichita Royalty Company repudiated said transaction and disclaimed any interest in the royalties above named.

XVIII.

That after the filing of said petition oil was discovered on said lands and they became valuable, and substantial sums have been received either by the defendant E. E. Scannell, as trustee, or by the defendant oil companies hereinabove named, and impounded, and, since said properties became valuable, the defendant Wichita
16 Royalty Company, acting through E. E. Scannell, has asserted ownership over the same and has executed a deed of trust thereon in favor of Charles L. Black to Ray Bland, as trustee, and the defendant E. E. Scannell and Guy Rogers has caused said deed of trust to be foreclosed and, as aforesaid, purchased by the said Guy Rogers, as trustee aforesaid, for $250.

XIX.

This plaintiff says that, by virtue of the facts hereinabove alleged, the income from all of the properties of the said Wichita Royalty Company should be impounded under the orders of this Court to await the final result

of this action; that said various parties are producing oil and gas and which is being purchased by the defendants Humble Oil & Refining Company, Continental Oil Company, and The Texas Company and various other oil purchasing companies; that the funds should not be disbursed pending this action and that this Court should inquire into and cause an accounting to be made by the defendant E. E. Scannell, as trustee of the Wichita Royalty Company, the defendant Guy Rogers, and the other defendants hereinabove named, and that upon the final trial of this cause the plaintiff have its judgment for its debt, interest, attorney's fees, and costs of suit, for an establishment and foreclosure of its lien upon all of the properties and assets of the Wichita Royalty Company, whether transferred or not, as aforesaid, and that the various deeds and conveyances, mortgages and assignments, be vacated and held for naught and that the defendant oil companies be required to account and pay into the registry of this Court the proceeds from the purchase of oil, gas, and casinghead gas from said properties; that, in the event that it is determined that the oil and gas royalties in Wheeler County and in Gray County were not binding upon the Wichita Royalty Company and that it had a right to repudiate the said transaction, then that the plaintiff recover judgment for the title and possession of said royalties, as well as the proceeds therefrom.

17

The plaintiff further prays that citation be had upon the defendants, Guy Rogers, individually and as trustee under the will of L. B. Rogers, deceased, Charles L. Black, W. H. Peckham, administrator aforesaid, Humble Oil & Refining Company, Continental Oil Company, and The Texas Company, and that they be required to answer herein at the next regular term of Court.

The plaintiff further prays for such other and further relief, general or special, in law or in equity, as it may be entitled to.

WEEKS & MORROW,
BULLINGTON, HUMPHREY & KING,
Attorneys for Plaintiff.

18 EXHIBIT "A".

The State of Texas,
County of Wichita.

Know All Men By These Presents: That Wichita Royalty Company, a trust estate, acting herein through E. E. Scannell, its sole trustee, hereunto duly authorized, of the County of Wichita and State of Texas, Party of the First Part, has mortgaged and hereby mortgages to Guy Rogers of Wichita County, Texas, Party of the Second Part, the following described real estate and premises situate in Okmulgee County, Noble County, and Kay County, all in the State of Oklahoma, to wit:

(Same property as described in foregoing petition.)

together with all the improvements thereon and appurtenances thereto belonging, and First Party warrants title to the same and every part thereof.

This mortgage is given to secure the principal sum of Twenty-five Hundred Dollars, or so much thereof as may be necessary for Second Party to advance to First Party in payment of Court costs, appeal costs, briefing costs, printing costs, and all other similar costs, and expenses incurred in appealing from time to time until final judgment is ultimately obtained, and all costs incident thereto are paid in connection with the cause of the City National Bank of Wichita Falls, Texas, against the Wichita Royalty Company, including the cross action filed by said Wichita Royalty Company in said cause, being numbered 24549B on the Docket of the 78th District Court of Wichita County, Texas. Should Second Party advance for First Party in the premises in excess of Twenty-five Hundred Dollars ($2500.00), then this mortgage shall secure such additional advancements as may be made, all of the money so advanced to become due and payable twenty days after final judgment
19 is ultimately entered in said cause and all sums so advanced by Second Party shall bear interest

from the date of their advancement at the rate of eight per cent per annum, all in accordance with the terms of the written agreement hereto attached and by reference made a part thereof.

In Witness Whereof this instrument is executed this the 25th day of February, A. D. 1932.

WICHITA ROYALTY COMPANY,
By E. E. SCANNELL,
Sole Trustee.

The State of Texas,
County of Wichita.

Before Me, Grace Jarnagan, a Notary Public in and for Wichita County, Texas, on this the 25th day of February, 1932, personally appeared E. E. Scannell, to me known to be the identical person who subscribed the name of Wichita Royalty Company and his own name to the foregoing instrument as its sole trustee and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of such Wichita Royalty Company, as its sole trustee, for the uses and purposes therein set forth.

Given Under My Hand And Seal Of Office the date above set out.

GRACE JARNAGAN,
(Seal) Notary Public, Wichita County, Texas.

My Commission expires: June 1st, 1933.

20 EXHIBIT "B".

List of Royalties

In Wichita County, Texas.

1. 29/640 of the total production in Three acres more or less out of the Northwest corner of the West 5 acres,

out of the north 10 acres, out of the north 20 acres, out of the north 40 acres, Block No. 75, Red River Valley lands, Wichita County, Texas.

2. 50/520 or 6/16 or 30/832 of the total production in the East 10 acres of the south 20 acres of the northwest 40 acres, out of Block No. 88, Red River Valley lands, Wichita County, Texas.

3. 1/64 of 1/8 or 1/48 of the total production in all of Lots Nos. 13 and 14 of the orchard addition to the town of Burkburnett, Wichita County, Texas.

4. 1/64 or 1/8 or 1/512 of the total production in 640 acres more or less known as J. B. Evans Farm, Block No. 818, to wit: 200 acres of T. E. and L. Co. Survey, and 200 acres of the Elizabeth Stanley Survey, and 200 acres more or less of Jucinda Meadors survey, Wichita County, Texas.

5. 3/22 of 1/8 or 3/176 of the total production in a certain tract of land in and to Block 1, Goodwin addition townsite of Burkburnett, and by virtue of a certain pooling contract which includes lots No. 19 and the East ½ of 20, Wichita County, Texas.

6. 1/11 of 1/8 of 1/88 of the total production in Lot No. 11 Block No. 1 Goodwin Addition, Townsite of Burkburnett, subject to a certain pooling contract dated August 7, 1918, Wichita County, Texas.

7. 5/12 or 1/8 of 5/96 of the total production in Lots Nos. 5-6-7-8-9 North ½ of Block No. 22, townsite of Burkburnett, Wichita County, Texas.

21 8. ½ of 1/8 or 1/16 of the total production in Lots Nos. 11-12-13-14-17-18-19-20 of the H. E. McConnell subdivision of the East 200 acres of the E. Michna land of the F. W. Huseman and A. A. Durfee surveys, Block No. 819, Wichita County, Texas.

9. 1/12 of 7/16 or 7/192 of the total production in two acre tract of land in the Musgrave addition, townsite of Burkburnett described in deed, Wichita County, Texas.

10. 3/64 overriding royalty in 40 acres of the south 100 acres of the Sarah Tankersley survey, Abstract 278, known as Lot 4, Young County, Texas.

11. 1/10 of 3/8 or 3/80 of the total production in Lots No. 9 of the H. E. McConnell subdivision of the East 200 acres of the Michna land in F. W. Huseman survey, Block 819, Wichita County, Texas.

12. 1/10 of 3/8 or 3/80 of the total production in Lot No. 10 of the H. E. McConnell subdivision of the East 200 acres of the Michna land in F. W. Huseman survey, Block 819, Wichita County, Texas.

13. 25/520 of 3/8 or 15/832 of the total production in the East 10 acres of the south 20 acres of the northwest 40 acres out of Block 88 Red River Valley lands subdivision, Wichita County, Texas.

14. 7/256 of the total production in the West 2½ acres of the north 5 acres of that 10 acres out of the 60 acres off the north end of the south 140 acres off the East 272 acres of Block 101, Red River Valley lands, Wichita County, Texas.

15. 5/360 of 7/16 or 7/1152 of the total production in the south 5 acres of the West 2½ acres of the East ½ of the southwest ¼ of the southwest 160 acres of Block 97, Red River Valley lands, Wichita County, Texas.

16. ¼ of 1/8 or 1/112 of the total production in Lot No. 19, College Heights additions, townsite of Burkburnett, subject to pooling agreement August 19, 1918, Wichita County, Texas.

22 17. 1/24 overriding royalty of the total production in 7 acres more or less in the south central part of Block 97, Red River Valley lands, Taylor farm, F. Stanley survey, Abstract 259, Wichita County, Texas.

18. 1/6 of 1/8 or 1/48 of the total production in Lot No. 3, Block 1, of the College Heights additions to the town of Burkburnett subject to pooling agreement, Wichita County, Texas.

19. ¼ of 1/8 or 1/32 of the total production in the southeast 50 x 660 feet, known as the J. E. Musick land, outer Block 20, of the City of Burkburnett, Wichita County, Texas.

20. ½ of 1/8 or 1/16 of the total production in 8½ acres out of outer block 24 of the outer blocks of the town of Burkburnett as described in deed, Wichita County, Texas.

21. 1/7 of 1/8 or 1/56 of the total production in Lot 7, Block 2, L. and S. Second Addition to the town of Burkburnett, known as the River Sand lease, Wichita County, Texas.

In Young County, Texas.

1. 1/16 of 1/8 or 1/128 of the total production in all of the south 80 acres of the J. A. Harkness survey, Abstract 1442, Patent 112, Volume 9, known as A. L. Owens farm, Young County, Texas.

2. 1/8 of 1/8 or 1/64 of the total production in all of the south 80 acres of the J. A. Harkness survey, Abstract 1442, patent 112, Volume 9, known as A. L. Owens farm, Young County, Texas.

3. 1/8 of 1/8 or 1/64 of the total production in the West 40 acres of the south 80 acres of the G. L. Aynes-

worth survey, B. R. I. R. 49, Abstract 1948, patented to J. A. Driver, dated August 13, 1913, Patent No. 3, Vol. 47, Young County, Texas.

4. 1/8 of 1/8 or 1/64 of the total production in the East 40 acres of the south 80 acres of the G. L. Aynesworth survey BR IR No. 49, Abstract 1948 patented to J. A. Driver dated August 13, 1913, Patent No. 3, Volume 47, Young County, Texas.

23 5. 5/8 of 1/8 overriding royalty or 5/64 of total in 40 acres of the south 100 acres of the Sarah Tankersley survey, Abstract 278, known as Lot 4, Young County, Texas.

6. 1/16 of 1/8 or 1/128 of the total production in the southwest 40 acres of the C. E. F. Auburg survey, Abstract 1663, Patent 550, Volume 11, patented to C. E. F. Auburg, Young County, Texas.

7. 1/32 of 1/8 or 1/256 of the total production in all of R. D. Owens survey, Abstract 2245 known as BR IR survey 38, patented October 29, 1919, by R. D. Owen, Young County, Texas.

8. 1/16 of 1/8 or 1/128 of the total production in all of the south 80 acres of the J. A. Harkness survey, Abstract 1442, Patent 112, Vol. 9, A. L. Owen farm, Young County, Texas.

9. 1/4 of 1/8 or 1/32 of the total production in all of the R. D. Owens survey, Abstract 2245, known as BRIR survey 38, patented October 29, 1919, by R. D. Owen, Young County, Texas.

10. 1/24 of 1/8 or 1/192 of the total production in the North 100 acres of the P. J. Humphries survey, Abstract 153, J. W. Hughes farm, Young County, Texas.

11. 1/16 of 1/8 or 1/128 of the total production in the southwest 40 acres of the C. E. F. Auburg survey, Abstract 1663, patent 550, Volume 11, patented to C. E. F. Auburg, Young County, Texas.

12. 3/16 of 1/8 or 3/128 of the total production in all of Brir 39 J. E. Dowdle survey, Abstract 2215, containing 160 acres, Young County, Texas.

In Eastland County, Texas.

1. 1/48 of 1/8 or 1/384 of the total production in 84 acres more or less out of the W. A. Cannon Pre-emption survey, known as the McClure Farm, Eastland County, Texas.

2. 11/12 of 1/32 of 1/8 or 11/3072 of the total production in the West 50 acres of the south 100 acres of the W. G. Watkins survey, known as B. F. Eakin Farm, Eastland County, Texas.

24 In Limestone County, Texas.

1. 2/52 or 1/8 or 3/416 of the total production in a fifty acres tract more or less, a part of the Pedro Varela XI League Grant said Fifty acres being more particularly described as follows: Beginning at the southwest corner of Felix Dancy's tract at a stake in Thurmon's north line; thence south 45 W 473 varas with Thurmon's said line to a stake in same; thence North 45 W. 261 vrs. with Thurmon's line to stake in same; thence north 45 W. 510 vrs. to a stake for corner in Geo. Harris S. Line; thence North 45 E 365 vrs. with said Harris S. Line to his S. E. Corner; thence south 45 E 512 vrs. with King Dancy's W. Line to stake in same; thence north 60 E 311 vrs. to stake in Felix Dancy's W. Line; thence south 35 E 200 vrs. to the place of beginning, containing fifty acres more or less, less 6 vrs. off the North end reserved from road, Limestone County, Texas.

In Navarro County, Texas.

1. 1/48 of 1/8 or 1/384 of the total production in a certain tract of land out of the W. H. Smith survey, conveyed by G. T. Jester and W. R. Bright to W. H. Lee on December 10, 1882, volume 41, page 415, Deed records of Navarro County, Texas, known as J. J. McGaw Farm.

2. 1/48 of 1/8 or 1/384 of the total production in a certain tract of land out of the W. H. Smith survey, conveyed by G. T. Jester and W. R. Bright to W. H. Lee on December 10, 1882, Volume 41, page 415, Deed Records of Navarro County, Texas, known as J. J. McGaw Farm.

3. 1/48 of 1/8 or 1/384 of the total production in a certain tract of land out of the W. H. Smith survey, conveyed by G. T. Jester and W. R. Bright to W. H. Lee on December 10, 1882, volume 41, page 415, Deed Records, Navarro County, Texas.

25 4. 1/32 of 1/8 or 1/256 of the total production in the West 1/2 of 100 acre tract out of the Northeast corner of J. B. Barry survey, Abstract 92, known as the W. A. Brown Farm, Navarro County, Texas.

In Archer County, Texas.

1. 1/8 of the 1/8 Fee Royalty in the West 30 acres of the East 50 acres of the North 80 acres of Block 1598, Texas Immigration and Land Company Sr. L. M. Hayter land, North 100 acres of south 240 acres of Block 1598 W. O. Hayter land, Archer County, Texas.

2. 1/16 of the 1/8 Fee Royalty in Block 46 of the Meade L. M. Pasture subdivision of the D. G. Thomas survey, Abstract 458, Archer County, Texas.

3. 1/16 of the 1/8 Fee Royalty in Block No. 9 of the Crawford Pasture Subdivision of the Isaac Holman Survey, Archer County, Texas.

4. 1/16 of the 1/8 fee royalty in the N. 40 acres of Block 21; S 32 acres of Block 21; S 60 acres of W 80 acres of Block 22; and E 60 of W 160 of Block 19, Anderson south pasture subdivision, Archer County, Texas; N 25 acres of E 50 of W 100 of Block 19.

5. An undivided 1/8 interest in 1070 acres of land situated in Archer County, Texas, known as the Porter Ranch, being described by metes and bounds as follows: Beginning at a stone marked P. J. B. for an inside corner of the Peter J. Bailey survey; thence south 950 varas to S. E. Corner; thence North 89-25 W 951 varas a stone for southwest corner Peter J. Bailey survey, Abstract No. 30; thence West 1951 varas to stone in road, the Southwest corner of J. Pointevent survey No. 1, Abstract No. 348; thence north 0-30 W 1600 varas to the northwest corner of the J. Pointevent survey; thence East in center of road 960 varas to inside corner; thence north 457 26 varas to Northwest corner; a fence corner; thence south 89-43 East along fence 1020 varas to corner; thence North 25 varas to corner; thence East 1295 varas to corner; thence East 1295 varas to Northeast corner in West line of Effie Stanford land; thence south 1134.4 varas to the south line of Peter J. Bailey survey; thence West 345.2 varas to place of beginning, and containing 1070 acres.

In Archer and Young Counties, Texas.

1. 1/8 of the 1/8 fee royalty in E. Pankonin survey, No. 1700, and L. Pankonin Sur. No. 1701, known as E. ½ of Section 4, BBB and C RR Co. Sur., Cert. 692, Young and Archer Counties, Texas.

In Callahan County, Texas.

1. 1/4 of the 1/8 fee royalty in the E 30 acres of a 71 acre tract of land out of the D. Milligan Survey, conveyed to A. J. Mathis, by W. H. Clements and wife, H. J. Clements, on the 4th day of December, 1907, said deed being recorded in Vol. 43, page 116, Deed Records of Callahan County, Texas.

In Wilbarger County, Texas.

1. 1/4 of 1/8 overriding royalty in the south 40 acres of the north 60 acres of the West ½ of the Northeast ¼ of section 83, Block 14, H and TC RR Co. Survey, Wilbarger County, Texas.

In Wheeler County, Texas.

1. 1/32 of the 1/8 Fee Royalty in all of the West one-half of the Southeast one-fourth of Section 43 in Block 24, H and G N Ry. Co. survey in said county, containing 80 acres of land more or less, Wheeler County, Texas.

2. 1/16 of the 1/8 Fee Royalty in all of the Northeast one-fourth of Section 47, Block 24, H and G N Ry Co. Survey in Wheeler County, Texas.

27 3. 1/32 of the 1/8 fee royalty in all of the East one half of section No. 54, in Block 24, H. and G. N. Ry. Co. Surveys containing 320 acres more or less Wheeler County, Texas.

4. 1/16 of the 1/8 fee royalty in all of the East 1/2 of section 57 in Block 24, H and G N Ry. Co. Survey in Wheeler County, Texas, containing 320 acres of land more or less.

5. 1/16 of the 1/8 royalty in all of the north one half of Section 45, Block 24, H and G N Ry. Co. Surveys in Wheeler County, Texas.

In Gray County, Texas.

1. 1/4 of the 1/8 royalty in the West half of the southwest quarter and the Northeast quarter of the southeast quarter of Section 59, in Block 25, H and G N Ry. Co. Surveys containing 120 acres of land, more or less, Gray County, Texas.

2. 1/8 of the 1/8 Royalty in the Northwest quarter of section 60, Block 25, H and G N Ry. Co. Surveys containing 160 acres more or less, Gray County, Texas.

In Hartley County, Texas.

1. 1/16 of the royalty in all of Section No. 54 as the same is shown by the W. T. Twitchell map of the subdivisions of the Bravo Ranch lands located in Hartley County, Texas, containing 640 acres more or less.

In Pecos County, Texas.

1. 1/4 of the royalty in all of Section 206, Block 3, Cert. No. 1/632 issued to the Texas and Pacific Railway Company and containing 640 acres, Pecos County, Texas.

28 EXHIBIT "C".

Trustee's Deed.

The State of Texas,
County of Wheeler.

Know All Men By These Presents: That, Whereas, on the 8th day of December, 1933, Wichita Royalty Company,

acting through its Trustee hereunto duly authorized executed and delivered to Ray Bland all of its property in trust to secure Charles L. Black in the payment of certain indebtedness set out in such deed of trust which is of record in Book 25 at page 75 of the Deed of Trust Records of Young County, Texas; in Vol. 20, page 107 of the Deed of Trust Records of Archer County, Texas; in Vol. 18, page 461 of the Deed of Trust Records of Wheeler County, Texas; and in Vol. 24, page 349 of the Deed of Trust Records of Gray County, Texas, which deed of trust provided that upon the maturity of a portion of the debt herein described, the trustee therein was authorized to sell all or any portion of the property thereby covered without exhausting the power of future sales; and

Whereas, default has been made in the payment of a portion of said debt which was past due and unpaid, and the said Charles L. Black, the holder of said indebtedness, has since such default requested the said trustee to sell a portion of the property covered by such deed of trust, such sale to be held without prejudice to the right and power thereafter to offer for sale and to sell such other and further properties of said mortgagor necessary to satisfy the mortgagor's indebtedness to his beneficiaries therein for present or future indebtedness, such portion of the property covered by such deed of trust being described as follows, to-wit:

All and singular the property of the said Wichita Royalty Company situated in the Counties of Archer, Young, Gray and Wheeler, Texas, whether such property be personal or real and whatsoever its description, including the land, interest in land, leases, royalties, mineral estates, leasehold interests, oil and gas rights, minerals, monies due from the sale of minerals, accounts receivable, choses in action, bonuses, rentals and monies due or to become due in lieu of royalty; and

29

Whereas, pursuant to such request, and to the provisions of said deed of trust, I proceeded to sell said property at public auction at the Court house door of Archer County, Texas, between the hours of ten o'clock A. M. and four o'clock P. M. on Tuesday, the 7th day of August, A. D. 1934, after having given public notice of the time, place and terms of such sale, as prescribed by the terms of said deed of trust and after first posting written notice thereof for three consecutive weeks prior to the date of sale in three public places in Archer County, Texas, Gray County, Texas, Wheeler County, Texas, and Young County, Texas, such posting being three in number in each of said counties, one of such notices being posted at the Court house door in each county and no two of the notices in each county having been posted within the same town; and

Whereas, at such sale said property was by me struck off to Guy Rogers, Trustee under the will of L. B. Rogers, deceased, for the price and sum of $250.00 he being the best and highest bidder for the same and said sum being the best and highest bid therefor:

Therefore, Know All Men By These Presents: That I, Ray Bland, of Wichita County, Texas, Trustee as aforesaid, by virtue of the powers granted to me by said deed of trust and in consideration of the premises and of the sum of $250.00 to me cash in hand paid by the said Guy Rogers as Trustee under the will of
30 L. B. Rogers, deceased, the receipt whereof is hereby acknowledged (which said sum of money I have applied according to the directions of said deed of trust), have Granted, Sold, and Conveyed, and by these presents do Grant, Sell and Convey unto the said Guy Rogers, Trustee under the will of L. B. Rogers, deceased, of the County of Wichita and State of Texas, the property hereinabove particularly described, being all and singular the property of Wichita Royalty Company situated in the Counties of Archer, Young, Gray and Wheeler, Texas.

To Have And To Hold the same property, together with all and singular, the rights and appurtenances thereto in anywise belonging unto the said Guy Rogers as Trustee under the will of L. B. Rogers, deceased, his heirs and assigns forever. And for and on behalf of the Wichita Royalty Company, the grantor in such deed of trust, and its successors, I do hereby bind the said Wichita Royalty Company and its successors to warrant and forever defend all and singular said premises in so far as is authorized by such deed of trust, unto the said Guy Rogers, Trustee under the will of L. B. Rogers, deceased, his heirs and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof.

Witness My Hand, this the 7th day of August, A. D. 1934.

RAY BLAND,
Trustee.

The State of Texas,
County of Wichita.

Before me, the undersigned authority, on this day personally appeared Ray Bland, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as Trustee, for the purposes and consideration therein expressed and in the capacity therein set forth.

Given under my hand and seal of office, this 9th day of August, A. D. 1934.

FERN KOLB,
31 Notary Public, Wichita County, Texas.

The State of Texas,
County of Gray.

I, Hereby Certify that the foregoing instrument of writing, with its certificate of authentication, was filed

for record in my office on the 28th day of August, A. D. 1934, at 1:10 o'clock P. M. and was duly recorded by me on the 30th day of August, A. D. 1934 in Vol. 63, page 469, of the Records of Gray County, Texas.

Witness my hand and the seal of the County Court of said County at office in Pampa, Texas, the day and year last above written.

CHARLIE THUT,
Co. Clerk County Clerk, Gray County, Texas.
(Seal) By KATHALINE HOWELL,
Deputy.

The State of Texas,
County of Young.

I, Pearl Matthews, Clerk of the County Court in and for said County, do hereby certify that the foregoing instrument, dated the 7th day of August, 1934, with its Certificate of Authentication, was filed for Record in my office, the 21st day of August, 1934, at 8:00 o'clock A. M. and duly recorded the 22nd day of August, 1934, at 11:40 o'clock A. M. in Deed Record in said County, in Vol. 155, pages 615.

Witness my hand and seal of County Court of said County, at office in Graham, Texas, the day and year last above written.

PEARL MATTHEWS,
Clerk County Court, Young County, Texas.
(Seal) By FRANCES BELL,
Deputy.

Filed for Record: Sept. 8, 1934, at 10 A. M. Recorded: Sept. 8, 1934.

By WANDA TAYLOR,
Deputy.
32 C. J. MEEK,
County Clerk.

The State of Texas,
County of Wheeler.

I, C. J. Meek, County Clerk of Wheeler County, Texas, do hereby certify that the above and foregoing instrument is a true and correct copy of a trustee's deed executed by Ray Bland, Trustee to Guy Rogers, Trustee. Same being recorded in Wheeler County, Deed Records, Vol. 84, page 158.

Given under my hand and seal of office, this 10th day of October, A. D. 1934.

(Seal) C. J. MEEK,
County Clerk. Wheeler County, Texas.

Indorsed: City Natl. Bank of W. F. Tex. vs. Wichita Royalty Co. Plaintiff's 2nd. Am. Orig. Pet. Filed May 11, 1936 By Edna Berner Deputy Dist. Clerk, Wichita County, Texas.

WICHITA ROYALTY COMPANY'S THIRD AMENDED ORIGINAL ANSWER, CROSS-ACTION AND INTER-PLEADER.

33 Filed June 18, 1936.

(Title Omitted.)

To the Honorable Judge of said Court:

Subject to and without waiving pleas and dilatory matters heretofore filed and pleading in due order, come now Wichita Royalty Company, a joint stock association operating under a declaration of trust filed in Wichita County, Texas, and E. E. Scannell, Trustee and one of the some thirteen hundred (1300) stockholders of Wichita Royalty Company, who joins herein for himself and all other stockholders of said company, hereinafter called

cross complainants, and with leave of the Court first had and obtained, file this their third amended original answer, cross action and interpleader in lieu and in amendment of the original pleading filed December 5, 1930, as amended by pleading filed February 14, 1931, as amended by pleading filed September 14, 1934, so that the same shall read as follows:

1.

Come now Wichita Royalty Company, a joint stock association operating under a declaration of trust filed in Wichita County, Texas, and E. E. Scannell, its Trustee and one of said some thirteen hundred (1300) stockholders of Wichita Royalty Company, who joins herein for himself and all other stockholders of said company, hereinafter called cross complainants, in answer to plaintiff's second amended original petition, as well as in cross action against the plaintiff, The City National Bank of Wichita Falls, Texas, and its successor, The City National Bank in Wichita Falls, Texas, both National Banking Corporations with principal place of business in Wichita County, Texas, and by way of interpleader against J. T. Harrell, individually and as Trustee for The City National Bank of Wichita Falls, Texas; W. H. Peckham,
34 as administrator of the Estate of G. W. Peckham, deceased; William Peckham and George Peckham, minor sons of G. W. Peckham, deceased; Robert W. Peckham; Mrs. Hazel D. Peckham, surviving wife of G. W. Peckham, deceased; and Texas Investment Company, a private corporation with principal place of business in Wichita County, Texas, where its officers and agents reside; E. A. Deaton, liquidating agent of The City National Bank of Wichita Falls, Texas, a resident citizen of Wichita County, Texas; L. H. Cullum, J. T. Harrell, Leslie Humphrey, Jack Jeffus, Oral Jones, Frank Kell, Joe Kell, J. J. Perkins, C. W. Snider and F. P. Timberlake, each a resident citizen of Wichita County, Texas, and each a stockholder in and director of The City National Bank

of Wichita Falls, Texas, and for answer, cross action and interpleader cross complainants say:

2.

That J. T. Harrell and W. H. Peckham reside in Wichita County, Texas; Mrs. Hazel D. Peckham, William Peckham and George Peckham reside at 817 North Cascade, Colorado Springs, Colorado; and that Robert W. Peckham resides at 2103 Schiller, Little Rock, Arkansas.

3.

Reference to "The Bank" herein shall mean the plaintiff Bank, The City National Bank of Wichita Falls, Texas, which also shall be referred to at times as the
35 old bank. The City National Bank in Wichita Falls, Texas shall be referred to herein as the new bank.

4.

Except as herein specifically admitted cross-complainants deny all and singular each and every averment of fact in plaintiff's said amended petition contained, demand strict proof thereof, and with respect thereto put themselves upon the country and ask thereon a determination thereof by a jury.

5.

Pleading non est factum to the instrument declared upon by plaintiff, cross complainants say that neither of said obligations herein sued on by plaintiff was executed by or with authority from Wichita Royalty Company, nor for its primary use and benefit; that Wichita Royalty Company is neither the maker nor indorser nor otherwise a party to nor bound by any instrument and/or obligation

sued on; that if in fact anyone signed the Wichita Royalty Company's name to any of the instruments sued on, the same was wholly inoperative against the association as no one had authority to bind the company thereby for the purposes, under the circumstances and upon the facts existing at the time; that as will hereinafter more fully appear, Wichita Royalty Company has received no consideration for the execution of any of the instruments sued on by plaintiff; that the same were executed solely and only for the personal benefit of and inured but to the advantage of G. W. Peckham, the bank and the officers of the bank negotiating for the original execution and subsequent renewals of the obligations declared upon by plaintiff; that monies originally advanced by the plaintiff upon notes originally executed in the name of the royalty company so that the borrowing trustee might obtain personal funds therefrom, have all been repaid to and received by the plaintiff as a matter of law, as well as of fact; and that the plaintiff and the impleaded defendants are indebted to Wichita Royalty Company in the amounts, from the times and upon the fact hereinafter shown.

36

6.

That at all times the plaintiff bank, its officers, agents and employees, knew each and every fact herein elsewhere pleaded, and were charged by law with knowledge thereof upon and under such facts so averred.

7.

The declaration of trust creating Wichita Royalty Company and which in and of itself was and is the charter of the Trustee's power, gives to the trustee thereunder general authority but to carry out the purposes of the trust, shown by the articles of agreement to be solely and only the purchase and sale of oil and gas royalties and

other oil and gas properties. It is therein provided that the title to all property acquired or to be acquired from time to time by the trust and all investments thereof should be made and held in the name of the Trustee as such, and that the Trustee shall hold all of the funds and property of the trust as Trustee with the powers and subject to the limitations declared in the declaration, shown to limit the powers of the Trustee to dealing in oil and gas business.

37 8.

G. W. Peckham was such Trustee from 1923 until his death in 1929. He was extensively engaged in private business aside from that of Trustee. Doing business with the plaintiff bank during this period, he carried his personal account in his own name therein and the trust account in the name of Wichita Royalty Company. Upon Peckham's death, E. E. Scannell became and now is substitute Trustee, succeeding after Peckham's death to the powers and duties theretofore vested in the said G. W. Peckham. From the time G. W. Peckham succeeded R. R. Robertson as Trustee of Wichita Royalty Company until October 8, 1925 said Trustee used trust funds for non-trust purposes for his personal benefit and individual profit, commingling trust funds with his own, sought to destroy evidence of Trust's title to property, colluded with the Bank and other parties hereto, made payments to such parties upon his private debts with Trust funds known to the payee to be a payment of private debts out of Trust funds, traded and trafficked with himself as an individual and himself as Trustee, and in such dual dealings profited personally therefrom with participation therein by the Bank and J. T. Harrell with notice of Trustee's breaches of trust, received and charged a salary more than $30,000.00 (Thirty Thousand Dollars) subsequent to his forfeiting his right to receive compensation, and in other ways was unfaithful to his trust, with the Bank and Harrell knowingly participating therein and through the facilities of the bank, and with the active

participation in breaches of trust by the officers and agents of the Bank the Trust was despoiled at times and to the extent which will hereafter be specifically pleaded by amendment later to be filed, but here now cross complainants allege an indebtedness due the Wichita Royalty Company by the Estate of G. W. Peckham, J. T. Harrell and the Bank in an amount in excess of $100,000.00 (One Hundred Thousand Dollars), the nature and amount of which being well known to the other parties hereto but unknown to cross complainants, but in an account to be stated the amount will be determined and later alleged as specifically as may be, all of which indebtedness arose subsequent to the active participation by the active officers of the Bank in known breaches of the Trust
38 by the fiduciary, and no prior demand for the restoration of such funds has ever been made heretofore; but demand is now made that all other parties render a true and accurate account of all Trust monies received, of the use to which the same was put, the amount thereof, through what facilities the result was accomplished, and all matters relevant to an accurate statement of the Trustee's execution of his trust.

9.

Thereafter and during the period beginning October 8, 1925 and ending November 12, 1929, G. W. Peckham drew forty-nine (49) checks on the funds deposited in the plaintiff bank to the credit of Wichita Royalty Company, aggregating the sum of $134,712.14, the checks being signed by him as Trustee for Wichita Royalty Company, and after his death seven (7) additional checks were drawn on the same account by Scannell as Trustee, aggregating $10,055.42. Forty five (45) of the checks drawn by Peckham aggregated $119,473.98 and were made payable to the order of the plaintiff bank upon which they were drawn. and four checks totaling $9,238.16 were in favor of G. W. Peckham personally. The Trustee was given personal credit on the books of the plaintiff bank for these forty-nine (49) checks which were paid out upon his

personal order upon his private checks for personal purposes, some to pay the plaintiff on personal obligations due by Peckham as an individual, and some to pay Peckham's various and sundry personal debts.

10.

All checks were upon voucher form. One check is here now reproduced as an example of all. That which is underscored was written into the printed form of the check:

Remittance Advice:

Attached hereto is our check in full settlement of the items listed below. If not correct please return with explanation.

Wichita Royalty Company.

Description	Detail	Total
Notes Payable:		
To apply on note held by City National Bank		*$1,500.00*

Detach here before depositing check.

(Perforation)

Wichita Royalty Company
Wichita Falls, Texas.

August 16, 1927 *No. 635.*

When Properly Indorsed Pay to the order of *City National Bank $1,500.00 Exactly One Thousand Five Hundred Dollars No Cents.*

WICHITA ROYALTY COMPANY,
By *G. W. PECKHAM,*
Trustee.

To The City National Bank, Wichita Falls, Texas.

On the back of checks as and when presented and above the place of usual indorsement were printed these words:

"Indorsement hereon by the payee constitutes acknowledgment of full payment of the items listed on accompanying remittance statement. No other receipt required."

11.

These checks were deposited by the bank to the personal account of the drawing trustee and a corresponding charge made against the trust deposit, the bank well knowing that the fund was a trust fund and was being improperly diverted from the trust account to the personal account of the trustee of such fund by being deposited to the credit of an account which the bank knew G. W. Peckham was using solely for personal purposes.

12.

There now follows a list of checks drawn upon the trust deposit with the plaintiff bank, wherein is given the check number, the date, the amount, the payee, to whom credit was given, and voucher notation, each item being charged to have been an accomplished misappropriation of trust funds by the trustee through the facilities and upon the active participation of plaintiff bank, to-wit:

Check No.	Date	Amount	Payee	Credit Given	Voucher Notation
427	10- 8-25	$ 5,500.00	Bank	Peckham	Purchase royalties
451	12-28-25	1,250.00	Bank	Peckham	Producing royalties
452	1- 4-25	5,000.00	Peckham	Peckham	Producing royalties
458	1-11-26	5,000.00	Bank	Peckham	Producing royalties
461	1-18-26	15,769.07	Bank	Peckham	Stephens Royalty
478	3- 6-26	17,623.70	Bank	Peckham	Marlborough Purchase
479	2- 6-26	6,000.00	Security	Peckham	Marlborough Purchase
485	3-31-26	7,500.00	Bank	Peckham	Marlborough Imp'mnt.
495	3-23-26	300.00	Bank	Note	Interest to Bank
503	5-20-26	3,000.00	Peckham	Peckham	Marlborough Imp'mnt.
506	5-29-26	500.00	Bank	Note	Interest to Bank
507	5-29-26	1,500.00	Bank	Peckham	Marlborough Imp'mnt.
510	6-16-26	4,500.00	Bank	Peckham	Marlborough Imp'mnt.
519	7-13-26	1,000.00	Bank	Peckham	Marlborough Imp'mnt.
521	7-16-26	300.00	Bank	Note	Interest to Bank
525	8- 2-26	4,000.00	Bank	Peckham	Highland Ir. Co. Note
531	8-27-26	500.00	Bank	Note	Interest to Bank
532	8-27-26	4,357.58	Bank	Peckham	Highland Ir. Co. Note
540	10-13-26	300.00	Bank	Note	Interest to Bank
541	10-13-26	10,000.00	Bank	Peckham	Royalties Wheeler and Gray Counties

Check No.	Date	Amount	Payee	Credit Given	Voucher Notation
550	11-20-26	7,500.00	Bank	Peckham	Purchase royalties
554	12- 2-26	1,500.00	Bank	Peckham	Royalties and fee
556	12-26-26	700.00	Peckham	Highland	Highland Ir. Co. Note
556-A	12-22-26	538.13	Peckham	Highland	Highland Ir. Co. Note
557	12- 7-26	1,920.00	Bank	Draft	Purchase royalties
569	1-11-27	300.00	Bank	Note	Interest to Bank
571	1-19-27	2,000.00	Bank	Peckham	Marlborough Imp'mnt.
579	2-19-27	2,500.00	Bank	Peckham	Marlborough Imp'mnt.
582	3- 1-27	500.00	Bank	Peckham	Interest to Bank
583	3- 1-27	301.82	Bank	Peckham	Purchase royalties
584	3- 1-27	500.00	Bank	Note	Interest to Bank
591	3-23-27	2,000.00	Bank	Peckham	Purchase royalties
599	4-14-27	300.00	Bank	Note	Interest to Bank
615	6- 8-27	500.00	Bank	Note	Interest to Bank
620	6-18-27	1,200.00	Bank	Peckham	Note to Bank
628	7-16-27	1,500.00	Bank	Note	Interest to Bank
635	8-16-27	1,500.00	Bank	Peckham	Note to Bank
650	10-14-27	2,400.00	Bank	Peckham	Note to Bank
657	11-25-27	1,800.00	Bank	Peckham	Interest to Bank
682	1-18-28	2,000.00	Bank	Note	Note to Bank
710	4-20-28	1,850.00	Bank	Peckham	Note to Bank

717	5-17-28	220.00	Bank	Note	Interest to Bank
721	6- 1-28	424.66	Bank	Note	Interest to Bank
733	7-23-28	220.00	Bank	Note	Interest to Bank
752	9-27-28	424.66	Bank	Note	Interest to Bank
768	12- 4-28	2,000.00	Bank	Note	Note to Bank
791	2-19-29	1,500.00	Bank	Note	Note to Bank
814	6- 7-29	1,500.00	Bank	Note	Note to Bank
824	7-15-29	212.49	Bank	Note	Interest to Bank
836	8-30-29	1,000.00	Bank	Note	Note to Bank
856	11-23-29	1,500.00	Bank	Note	Note to Bank
880	1-24-30	1,500.00	Marlborough	Tex. Inv. Co.	Loan
890	2-24-30	1,000.00	Bank	Note	Note to Bank
898	4-10-30	1,000.00	Bank	Note	Note to Bank
908	5-13 30	500.00	Tex. Inv. Co.	Tex. Inv. Co.	Marlborough Note
920	6-14-30	1,500.00	Bank	Note	Note to Bank
930	7-14-30	3,055.42	Bank	Note	Note to Bank
Total		$144,767.56			

41

13.

Additional to the above, and as a further misappropriation, the Trustee Peckham sold two properties belonging to the trust and received therefor the aggregate of $12,048.00, $6,000.00 thereof being evidenced by cashier's check and deposited to the personal account in the plaintiff bank, of G. W. Peckham and by him used for his own personal benefit. The remaining $6,048.00 was paid by the purchaser of the trust property under escrow contract between Wichita Royalty Company and the purchaser, deposited in the plaintiff bank as escrow agent, with executed conveyance to be surrendered to the purchaser upon the payment of $6,000.00 and interest, as evidenced in writing deposited with the plaintiff bank. The purchaser paid into the escrow the total of $6,048.00 by checks payable to the plaintiff bank, which the bank, well knowing the money to be trust money, deposited to the personal account of G. W. Peckham and which was by him misappropriated.

14.

During the period of time covered by the transactions above, the bank received from G. W. Peckham upon his personal indebtedness to it $57,764.21, said payments being made to the bank from the personal account of G. W. Peckham with the bank to which the above funds had been credited, and but for the credit of which trust funds such payments could not all have been made, and at the very outset of the series of misappropriations, the defaulting trustee diverted trust funds from Wichita Royalty Company's account to his individual account so that he could, as he did, pay therefrom the bank upon his individual debt.

15.

The perforation on each check and the notation on the back thereof advised the bank that the check as and when

presented was a voucher check and that attached thereto when issued was a voucher upon which was written the purpose thereof, and the bank was thus referred to matters of writing wherefrom it affirmatively appeared that each of the several checks now declared upon
42 was issued for other than a trust purpose, but a purpose personal to the Trustee and involved in a transaction wherein the trustee was personally interested, and in the consummation of which there was a breach of trust facilitated through the bank's charging the trust deposit and crediting the trustee's personal account.

16.

Each of the charges against the trust deposits and credits to the personal account of the drawing Trustee was made at a time when the personal account of the Trustee had been all but exhausted and he was indebted in large amounts to the plaintiff bank.

17.

The impleaded defendant, J. T. Harrell, was, during the period of these several transactions, the active officer of the plaintiff bank who negotiated with G. W. Peckham certain loans hereinafter described; a substantially large part of his loans were first deposited to the trust account and therefrom diverted to the personal account of the drawing Trustee so that such Trustee as an individual might, as he did, pay to the loaning banker upon Peckham's personal debt, and so that the loaning banker might, as he did, pay therewith the bank upon his private debt, and so that the bank might, as it did, receive therefrom a portion of the proceeds of such loan upon the private debt of W. H. Peckham, and upon the debt of G. W. Peckham.

The $22,000.00 note sued on by the bank was but in renewal of a $15,000.00 note dated January 18, 1926 and a $25,000.00 note dated March 1, 1926. The 1926 loans were negotiated by G. W. Peckham through J. T. Harrell for the bank:

(a) On January 18, 1926, J. T. Harrell credited the trust deposit with $15,000.00 and charged the trust liability ledger therewith, Peckham executing Wichita Royalty Company's note therefor. That date Peckham personally owed the bank $28,050.00 plus accrued interest. Peckham and Harrell were jointly and severally liable to Highland Irrigation Company for $51,895.00 plus
43 interest as the unpaid purchase price of Marlborough Addition, their liability inter se being one-fourth each. Theretofore, Peckham had caused to be issued trust checks Nos. 452 and 458, dated January 4th and January 11, 1926, respectively, totaling $10,000.00, causing the voucher records to show the purchase of royalty and receiving personal credit therefor at the bank. On January 18, 1926, the date of the loan, Peckham issued trust check No. 461 for $15,769.07, made payable to the bank, receiving personal credit therefor the same day the bank charged the trust with the $15,000.00 loan. The notation on voucher No. 461 showed the $15,769.07 check to be the balance of the $25,769.07 purchase of one-fourth royalty under Stephens 40 acres and referred to as checks Nos. 452 and 458 for $5,000.00, previously paid. The Stephens royalty was owned by J. T. Harrell and C. E. Basham, both active officers of the plaintiff bank. One-half of this royalty was sold to G. W. Peckham by deed dated November 9, 1925 and filed for record November 16, 1925. Later on, and as a separate transaction, the other one-half of the Stephens royalty was sold by Harrell and Basham for an agreed consideration of $22,407.00, the deed being dated January 1, 1926, acknowledged and delivered January 28, 1926 and filed for record February 4,

1926. Seven days after the $15,000.00 loan and the diverting of $15,769.07 to the personal account of G. W. Peckham and before another deposit was made to Peckham's personal account, Peckham issued his personal check on his private account for $10,028.00, payable to J. T. Harrell and C. E. Basham in part payment for the Stephens royalty sale. But for the transfer of this $15,769.07, Peckham's personal balance would have been but $1,084.04 when the bank paid Harrell and Basham the $10,028.00, in payment of his private debt. The difference between the $25,769.07 transferred from the trust account to the personal account of the Trustee and shown by trust books to be in payment of Stephens royalty, and the $22,407.00 sale price by Harrell and Basham makes the Trustee's personal profit $3,362.07.

44 This 15,000.00 loan was made by Harrell personally. He personally made the royalty sale. It is the custom of banks and bankers, and was at that time, that when a loan of this size is made, the purpose of the loan is always inquired into, the purpose of this loan being to obtain for Peckham personally funds with which to pay the loaning banker, Harrell, and his co-partner, C. E. Basham, an active officer of the bank. Although at the time, the trust had lots of property and owed no debts, still the loan being intended for the personal benefit of G. W. Peckham, J. T. Harrell required that G. W. Peckham indorse the note personally. The trust now charges that this $15,000.00 loan so made between Harrell and Peckham was for the purpose of G. W. Peckham's being able, at a time when his personal credit was exhausted, to use trust credit so that he might obtain money to divert to his personal account and therefrom pay in part a private debt to the loaning banker, a part to pay the bank itself a private debt, the balance to be paid to Peckham's personal creditors, and all of the facts and circumstances to be kept and concealed from the stockholders. Trust checks in excess of the deposited loan were subsequently honored by the bank to which they were payable in sufficient amounts to discharge this

credit. Furthermore, of the $10,028.00 transferred from the Trust account to Peckham's personal account as a part of the proceeds of the loan, $5,014.00 of said proceeds of said loan was deposited to the personal account of J. T. Harrell in the bank on January 25, 1926 at a time when J. T. Harrell's deposit balance was but $219.16, and on the same day J. T. Harrell, by check drawn upon his said account with the bank, paid to the bank upon his personal debt $5,006.67. Thus was accomplished circuitously a misappropriation through the facilities of the bank in a transaction wherein the Trustee was personally interested and which had for its primary object the accomplished purpose to pay the bank and Harrell with the proceeds of the loan items of indebtedness due by others than the Trustee, resulting in J. T. Harrell's effecting a large sale of his personal property, collecting a private debt from G. W. Peckham of $10,028.00 for himself and C. E. Basham and in turn paying the bank therefrom $5,-006.67.

45 (b) On March 1, 1926, the impleaded defendant, Harrell, for the bank, credited the trust deposit with $25,000.00 and charged the trust on its liability ledger therewith, receiving the trust note therefor executed by G. W. Peckham. That day Peckham personally owed the bank $28,050.00 plus interest. His deposit balance was $341.90. He and Harrell were jointly liable to Highland Irrigation Company for $51,895.00 plus interest as the unpaid purchase price of Marlborough Addition bought September 25, 1925 and platted as an Addition December 4, 1925. Sales of lots were active on a start, but economic conditions changed and sales slowed up. It was then necessary to spend large sums of money for the improvement of Marlborough Addition. Thus on March 1, 1926, Peckham negotiated a loan with Harrell, both being partners in Marlborough Addition, and good friends. Harrell issued the bank's deposit slip for $25,000.00, thus crediting the trust account and charging its liability ledger. That same day Peckham issued his

personal check for $11,811.85 to his brother, who was another partner in Marlborough Addition, the payment being for an additional one-fourth interest in Marlborough Addition, making Peckham's personal interest in such Addition one-half thereof. Peckham's personal balance of $341.90 the morning of March 1, 1926 was insufficient to clear the $11,811.85 check drawn thereon payable to Peckham's brother. The deposit balance of the trust that morning was $11,657.94, which during the day was increased to $35,657.94 by the $25,000.00 credited loan. Before another deposit and on March 6, 1926, Peckham issued trust checks Nos. 478 and 479, the first for $17,625.70 drawn on and payable to the plaintiff bank, presented same to the bank and received personal credit therefor; the other for $6,000.00 payable to Security National Bank, where Peckham received personal credit. The day of this simulated transfer of trust funds to the extent of
$17,623.70 from the trust account to the personal
46 account of the drawing trustee and before another deposit therein and but the fifth day after Harrell's $25,000.00 loan to Peckham, G. W. Peckham issued his personal check for $5,060.00, payable to J. T. Harrell and C. E. Basham, which was paid the same day and credit was given by the bank therefor, one-half to Harrell and one-half to Basham. But for this $17,623.70 transfer of the proceeds of the $25,000.00 loan, the personal account of G. W. Peckham would have been $125.20, when in fact Harrell cashed the $5,060.00 personal check of G. W. Peckham in payment of a private debt. On the 9th day of March Peckham's brother cashed his $11,811.85 check, and the same day and from said funds W. H. Peckham paid the bank his personal debt. The check No. 478, on its face, when presented and cleared referred to a voucher which showed the purpose of its issuance to be the purchase of G. W. Peckham's one-half interest in Marlborough Addition for a set up consideration of $49,566.20, represented by $23,623.70 cash paid by checks Nos. 478 and 479, and subject to $23,215.50 due Highland Irrigation Company. Peckham had paid in cash at the time

of his original purchase of a one-fourth interest, $4,723.75. After March 6, 1926, Peckham personally received trust funds totaling $31,596.74 entered upon the books as improvements to Marlborough Addition, and personally expended thereon but $27,000.00, a further difference of $4,596.74 in his favor, or a total profit of $7,088.10 to Peckham's brother personally, and $11,684.84 to Peckham personally, in a transaction where Peckham assumed the dual role of dealing as an individual with himself as Trustee, at a profit to himself personally, without notice to or knowledge by the stockholders from whom all transactions were carefully and methodically concealed, and the checks being payable to the bank was but a part of the fraudulent plan to conceal. J. T. Harrell made the $25,000.00 loan. He was still Peckham's partner in the Marlborough Addition and his personal friend. He was a banker with long experience and it was customary for banks and bankers to inquire the purpose of a loan of that size, which loan was made for the purpose of in-
47 uring to the benefit of the Trustee himself, the loaning banker, the bank and the personal creditors of the drawing Trustee. Peckham was personally required to indorse the note. This original loan was made with Harrell so that Peckham with an exhausted personal credit might use trust credit so that he might divert monies from the trust deposit to his personal account in profit to himself, the bank and the loaning banker might profit in the transaction where he was both purchaser and seller, and assuming a dual position in breach of trust, all known to but condoned by the bank, its agents, servants and employees, whereby and wherefrom the bank received payment upon the personal debts of G. W. Peckham and W. H. Peckham, and Harrell was paid upon the personal debt of G W. Peckham, the bank actively participating therein and profiting the. ,y.

19.

Subsequent to the execution of the above 1926 notes, and in addition to admitted credits thereon from trust

funds, there was paid thereon items totaling $11,250.00, with which such notes were not credited and which aggregate sum was not given the effect of payment upon any renewal so that the last renewal of said 1926 transactions, in any view, were without consideration to the extent of said several payments. This $11,250.00 is represented by checks totaling such amount, of which the check reproduced above is one, all being drawn on and payable to the bank's order, and when presented referred by writing thereon to an accompanying remittance advance showing each check to have been issued to apply upon the trust's note payable to the bank. The proceeds of these checks, instead of being applied to said indebtedness to the bank, were credited to Peckham's personal account and withdrawn therefrom upon his private check to pay his individual debts and by him misappropriated. During Peckham's life he caused Trust books to show its bank liability to have been reduced by such amounts though himself renewing the bank's note from time to time without either of such credits. Upon Peckham's
48 death, the substitute Trustee as a part of a plan to cover up Peckham's fraud, and further to conceal from the stockholders the true facts, changed Trust books to conform to the bank's book and renewed the note without such credit. Peckham in his lifetime paid from his personal account $6,821.22 upon the Trust's note, yet such was but payments upon his own liability to the bank; but should it be determined that such notes were the obligation of the Trust, the Trust has elected, and now elects to credit such items, first, upon the misappropriation evidenced by the $6,000.00 check drawn on the plaintiff bank payable to the order of the Security National Bank, deposited to Peckham's personal credit with the Security National Bank, and therefrom misappropriated by the Trustee, and, second, upon the $6,000.00 cashier's check misappropriation.

20.

Through a joint participation of the bank and the Trustee $53,740.89 was misappropriated upon checks for the most part payable to the bank's order and drawn on the Trust deposit account with the bank, and by the bank charged against the Trust deposit and credited to the personal account of the drawing Trustee and therefrom disbursed upon the personal check of G. W. Peckham, some to pay the bank his private debt, some to pay bank officers an individual obligation and all for purposes other than the Trust. To simulate and ad a part and plan of his system to defraud and conceal, the Trustee caused such checks for the most part to be made to the bank's order and caused Trust checks to reflect the purpose of said checks totaling said aggregate amount to be for the purpose by the Trust of certain mineral interests but the stockholders were not advised, nor did the checks of the Trust show, that Peckham had a personal interest in any of such transactions.

21.

During his Trusteeship, Peckham was extensively engaged in the purchase and sale of oil properties as an individual and in his own right. He would generally buy properties near development, in the vicinity of a
49 drilling well and at a time and under circumstances when the value of properties in the locality was of a highly speculative and fluctuating value. These properties he would buy with his own money and take title thereto in his own name, and during the period of the fluctuating value and at a time when it appeared that the interest so bought was of little or no value, sometimes when the property had been condemned, he would thereupon execute an instrument of conveyance from himself as an individual to his Trust at a consideration fixed by himself, sometimes for the exact amount of money that he paid for the interest, and sometimes at a

price whereby he would personally profit, but at no time did he have the prior consent or subsequent approval of those whose monies and properties he held in trust, and for whom he was a trusted fiduciary.

22.

Thus the Trust books were caused to reflect the purchase of properties for the aggregate amount of $53,740.89, but such Trust books did not show that these properties had been bought by Peckham as Trustee from himself as an individual. Of the properties so reflected by Trust books as having been purchased by the Trust and conveyed by Peckham to the Trust, he only owned properties representing $45,740.89, while Trust books and vouchers described other properties of a value of $8,000.00, which were never owned by Peckham, and which the Trust never received. In other words, Peckham himself as an individual owned properties which he sold and conveyed to the Trust for a set-up book value of $45,740.89 which he himself received, while he also set-up on the books as properties acquired by the Trust $8,000.00 paid to him as an individual for properties which Peckham did not own, and which the Trust did not receive; all of the properties (except Stephens Royalty) were practically valueless during Peckham's lifetime, none of them having produced a drop of oil.

50 Peckham was never unfair to himself when acting in the dual capacity of buyer and seller. His every sale as an individual and purchase as a Trustee was without the prior consent or subsequent knowledge of those for whom he was acting in a fiduciary capacity, all of the facts being concealed during Peckham's life and by the substitute Trustee until immediately before filing the suit.

23.

With respect to all of such properties so conveyed, or supposed to have been conveyed by G. W. Peckham as an

individual to his Trust, cross complainants have elected to repudiate as nullities and with respect to same make such tenders and offers due equity as in good conscience required, such transactions being in connection with checks listed above and numbered 427, 451, 452, 459, 461, 550, 583 and 591, and concerning the following properties:

(a) The East 30 acres of a 71 acre tract of the Mulligan Survey, Callahan County, Texas, more particularly described in a deed recorded in Vol. 103, at page 150, of the Deed Records of said County.

(b) 1070 acres known as the Porter Ranch in Archer County, Texas.

(c) Marlborough Addition to the City of Wichita Falls, Texas, and/or its corporate successor, the Texas Investment Company.

(d) East ½ of Lot 10, North Anderson Ranch, Archer County, Texas.

(e) Southwest 60 acres of the N. Polk Land, Abstract 717, William Polk Preemption Survey, Archer County, Texas.

24.

Typical of the way and manner in which Peckham dealt with himself as an individual and himself as Trustee were his transactions behind Trust check No. 541 for $10,000.00, which was drawn on and payable to the plaintiff bank and deposited to the personal credit of the drawing Trustee. Between October 20, 1926 and December 7, 1926, Peckham personally bought mineral and/or royalty interest in Gray and Wheeler Counties, Texas, for an aggregate consideration of $14,800.00. He sold certain fractional interests thereof to United Royalty Company, to Tolowa Royalty Company, Wotola Royalty Company,

51 Murchison & Fain and J. T. Harrell, conveying certain fractional interests thereof to his own Trust and retaining a substantial interest therein himself, his profit in the entire transaction being $17,700.00. He directed the bookkeeper to enter upon the books of the Trust that the $10,000.00 check theretofore issued represented the Trust's purchase of these Gray and Wheeler County properties, and though he had advised the stockholders that the property had been acquired, he did not advise the stockholders that he, as an individual, had sold the properties to the Trust at a profit to himself, nor did he advise the stockholders that he had retained in his own name title to an interest in the certain respective properties which he was holding in trust for Wichita Royalty Company, such intent to hold in trust such properties additional to those actually conveyed being evidenced by a memorandum in his own handwriting in words and figures as follows, to-wit:

"Bought Wheeler County royalty for $44,800.00—Paid as follows, Webb $5,400.00, Johnson $4,000.00, Noel $5,000.00, Section 57 $8,400.00, Section 43 $2,000.00, Section 44 $4,000.00, Plummer $8,000.00, Section 12 was $8,000.00, sold Tolowa $30,500.00, sold Joe Art $1,000.00, sold J. T. Harrell $1,000.00, sold United Royalties $20,000.00, sold balance to Wichita Royalty Company for $10,000.00, which was exact cost paid."

25.

At the time when cross complainants first filed their cross action herein said Gray and Wheeler Counties properties had little or no value and no minerals ever having been discovered thereon and produced therefrom, in view of which it was the then opinion of E. E. Scannell, Trustee of Wichita Royalty Company, that it was for the best interests of the Trust and of its stockholders to repudiate the transactions above described and seek to

recover the monies wrongfully used by G. W. Peckham by the issuance of the above described Trust check No. 541. Cross complainants, therefore, first pleaded herein that such transaction was not binding upon them, made tenders with respect thereto, offered to do equity and sought judgment for the $10,000.00 with interest. Plaintiff bank, J. T. Harrell and Peckham Estate, however, resisted said position of the Trust and sought to establish and by judgment decree that said transactions were binding upon the Trust and that said Gray and Wheeler Counties properties rightfully belonged to the Trust, and that it had neither right nor remedy to do other than to accept as its own the title to all of the Gray and Wheeler Counties properties standing in the name of Wichita Royalty Company or G. W. Peckham at the time of the latter's death.

52

Upon the trial, the District Court denied the Trust its petition for said relief, and in legal effect sustained the position of the plaintiff bank and the Peckham Estate with respect to Gray and Wheeler Counties properties, from which adverse judgment the Trust appealed and which judgment was vacated by the Supreme Court by opinion reported in the 89 S. W. (2) 394.

Pending the appeal and final judgment of the Supreme Court minerals were discovered upon said Gray and Wheeler Counties properties, and oil and gas in paying quantities produced therefrom so that the value thereof at the time of the filing of this amendment is such as that E. E. Scannell, Trustee, is of the opinion that it is to the advantage of the Trust Estate to ratify, adopt and confirm Peckham's conveyances to the Trust with respect to Gray and Wheeler Counties properties, and his holding in his own name but in Trust for cross complainants all the remaining portions of Gray and Wheeler Counties purchases not sold by G. W. Peckham to others than the Wichita Royalty Company in his lifetime, the memo-

randum above evidencing Peckham's holding such unsold portions of said properties in trust for cross complainants.

E. E. Scannell, as Trustee, therefore invokes the jurisdiction of this Court to instruct him as Trustee with respect to his rights and duties in the premises, and to the extent that it be not inconsistent with such instructions of the Court said Trustee now claims title for Wichita Royalty Company to those mineral interests situated in Gray and Wheeler Counties, Texas standing of record
53 either in the name of Wichita Royalty Company or G. W. Peckham, and including:

Wheeler County.

(a) 1/128 plus 15/32 mineral interest as royalty in the NE ¼ of Section 47, Block 24, H&GN Ry. Co. Survey, Wheeler County, Texas.

(b) 1/256 plus 1/64 mineral interest as royalty in the W ½ of the SE ¼ of Section 43, Block 24, H&GN Ry. Co. Survey, Wheeler County, Texas.

(c) 1/256 plus 15/64 mineral interest as royalty in the E ½ of Section 54, Block 24, H&GN Ry. Co. Survey, Wheeler County, Texas.

(d) 1/16 mineral interest as royalty in the NW ¼ of Section 44, Block 24, H&GN Ry. Co. Survey, Wheeler County, Texas.

(e) 1/16 mineral interest as royalty in the N ½ of Section 45, Block 24, H&GN Ry. Co. Survey, Wheeler County, Texas.

(f) 1/16 mineral interest as royalty in the E ½ of Section 57, Block 24, H&GN Ry. Co. Survey, Wheeler County, Texas.

Gray County.

(a) 1/4 mineral interest as royalty in W ½ of the SE ¼ and the NE¼ of the SE¼ of Section 59, Block 25, H&GN Ry. Co. Survey, Gray County, Texas.

(b) 1/8 mineral interest as royalty in S 1/2, Section 61, Block 25, H&GN Ry. Co. Survey, Gray County, Texas.

(c) 1/64 mineral interest as royalty in NW ¼, Section 60, Block 25, H&GN Ry. Co. Survey, Gray County, Texas.

Typical also of the way and manner in which said former Trustee dealt in a dual capacity with the subject matter of his trust is the purchase of Stephens royalty from J. T. Harrell and C. E. Basham detailed above, whereby J. T. Harrell and other officers of the bank, the bank itself and G. W. Peckham personally profited, and which property so standing in the name of the Trust at the time E. E. Scannell became Trustee, and prior to the time when said substitute Trustee undertook, by cross action, to protect the interests of the stockholders, and at a time when he was operating the Trust under an agreed plan to conceal, he was induced to sell said Stephens Royalty and, therefore, since such sale has not been in position to repudiate said transaction, the purchaser thereof being innocent of any wrongdoing by the Trustee in the Royalty Company's acquisition of the interest, from which it follows that the Trust is now relegated to this, its suit, to recover against the Peckham Estate, J. T. Harrell and the Bank the profit which Peckham personally made in the transaction.

54

26.

A portion of the misappropriation by the Trustee Peckham was accomplished through the facilities of the bank upon checks for the most part payable to the bank's order

aggregating $55,219.44, which the Trustee caused his books to show as the purchase price and improvement cost of what is known as Marlborough Addition, but which transactions were carefully withheld and concealed from the stockholders. The vouchers referred to by the checks contained the notation that the purpose of the respective checks was to purchase and/or improve this addition. J. T. Harrell, G. W. Peckham and W. H. Peckham and another bought and for some six months developed a tract of land adjoining Wichita Falls as a townsite addition. The burden became heavy. Peckham was jointly obligated with the bank's President upon more than $50,000.00 as the unpaid purchase price of this land. Peckham was also indebted to the bank in excess of $28,000.00. His personal balance was $341.90. His credit was exhausted. The trust had lots of property and owed but little. Much money was needed further to improve Marlborough. Peckham and Harrell were friends; they were business associates. Peckham approached Harrell for a loan. A $25,000.00 loan was negotiated as above shown. Peckham personally indorsed the $25,000.00 note. He then issued trust check No. 478 for $17,623.70 drawn on and payable to the bank's order and received personal credit therefor with the bank. Thereupon G. W. Peckham got a deed to himself personally from his brother,
55 W. H. Peckham, to his brother's one-fourth interest in Marlborough Addition making G. W. Peckham, as an individual, the then owner of an undivided one-half interest in the Marlborough venture. It was, and is, the universal custom of banks and bankers when a ten to twenty-five thousand dollar loan is negotiated, that the bank learn by inquiry the purpose for which the money is required. The day this $17,623.70 check was deposited to Peckham's personal account and before another deposit was made to his personal account, and by the fifth day after Harrell's $25,000.00 loan, Peckham issued his personal check for $5,060.00, payable to J. T. Harrell and another officer of the bank, to pay a personal debt of Peckham to these gentlemen. Said check being paid

the date of its issuance, J. T. Harrell received a $2,530.00 credit at a time when but for the $17,623.70 trust check deposited to Peckham's account his balance would have been but $125.00 when Harrell cashed the $5,060.00 check.

Likewise G. W. Peckham paid W. H. Peckham in excess of $11,000.00 of said funds transferred from the Trust account to the personal account of G. W. Peckham, which sum in excess of $11,000.00 was deposited to the personal account of W. H. Peckham in plaintiff bank, and therefrom and simultaneously therewith W. H. Peckham paid therefrom to the plaintiff bank the amount of his personal indebtedness to the bank.

Later G. W. Peckham executed a deed to one-half interest in Marlborough, but it was never delivered but was left in the possession of a third party with instruction that it should not be recorded but should be concealed from everyone and no one permitted to see it or to know of its existence, and it was not the grantor's intention that the deed should be delivered. During his lifetime, Peckham treated the property as his own, exercised dominion over it, executed deeds of conveyance to part's thereof, signed releases of liens thereon, rendered the same for taxation as his own and never disclosed to anyone of any sale thereof, and in fact so acted as
56 to evidence his intention to claim personal title thereto in the event of its success but to repudiate the same and claim it to be a Trust loss in the event of failure.

Thus said $25,000.00 loan was made so that same might result, as it did result, in a transfer of a substantial portion thereof from the Trust account to the personal account of G. W. Peckham, and therefrom used in part to pay to officers of the bank Peckham's personal debt, including a payment to the plaintiff bank and J. T. Harrell and so therefrom Peckham might pay, as he did, his brother, W. H. Peckham, more than $11,000.00 so that W. H.

Peckham might, as he did, pay to the bank the balance of his private debt, all of which is pleaded as unauthorized act on the part of the Trustee, a breach of Trust by him of his fiduciary obligations, of the want of authority to execute the note for the sum so borrowed, and the active participation in breaches of trust by J. T. Harrell and the bank, and in support of the plea of non est factum and want of consideration for the obligation sued upon by the plaintiff bank.

27.

Wichita Royalty Company is sued herein upon its indorsement of Texas Investment Company's note payable to the bank. The maker of this note is the corporate successor of the Marlborough Addition partnership, shown above to have been formed in the fall of 1925. As shown, Peckham originally owned a quarter interest and subsequently purchased a similar interest from his brother, and was the record and equitable owner of a one-half of the Marlborough properties and liable for half of its debts at the time the above described $25,000.00 loan was negotiated for Peckham's personal benefit in March, 1926, as above pleaded. After having executed, but not having delivered, a deed to his interest, Peckham later joined J. T. Harrell and the other owner of Marlborough partnership in the formation of a corporation known as the Texas Investment Company, Peckham subscribing personally to one-half of the capital stock and the other partners their pro rata parts. Peckham joined in a deed to the corporation and the same was recorded. This corporation took title to this property free of the outstanding and unrecorded deed which Peckham had executed to his trust.

57

28.

Soon after the death of G. W. Peckham in November, 1929, the substitute Trustee, who theretofore had been

the bookkeeper of the Trust acting under the direction of Peckham and having but ministerial duties, and being the owner of no certificate of stock in the Trust during the period of time that Peckham was misappropriating the funds, became by appointment of Court the substitute Trustee, and W. H. Peckham became the administrator of Peckham's Estate. These two for a period of time after the death of G. W. Peckham carried out a series of negotiations looking to the satisfactory adjustment of all these matters of defalcation by the former Trustee so that it would not come out and be generally known, and the fraud of the deceased Trustee would be concealed. The substitute Trustee finding that the bank had not applied certain checks upon the Trust's note to the bank, and further finding additional discrepancies so that the total considered by him to be a discrepancy was $19,826.67, being the aggregate amount of the checks which were shown by the books to have been applied upon notes payable to the bank, but which were in fact not so applied, and the sale price by the Trust of two royalties shown on the books during Peckham's lifetime to have been accounts receivable by the Trust, but which the substitute Trustee found Peckham had personally collected and retained. This discrepancy was called to the administrator's attention, and the bank agreed to back Scannell up in the thing and it was agreed that the matter be concealed, the stockholders not being notified and the public not advised with a view to repaying the then considered defalcation out of the proceeds of a life insurance policy of more than $100,000.00.

29.

The substitute Trustee told an attorney that there was this $19,826.67 discrepancy and obtained the services of such attorney to prepare a proof of such claim to be filed with the administrator but said substitute
58 Trustee did not tell said attorney any of the other facts herein elsewhere pleaded and did not ask advice concerning the rights of the stockholders, nor

of the Trustee's duties as substitute Trustee with respect to all of the facts herein pleaded but simply requested said attorney to prepare a claim to be filed for, and covering specified items totaling as above shown. Said account was filed at a time when it was agreed by and between the substitute Trustee and the administrator of Peckham's Estate that the fraud of Peckham would be concealed so that it would not become generally known, and the existence of the $100,000.00 life insurance money and the administrator's promise to endeavor to work payment of the discrepancies out of such life insurance money, and other facts herein elsewhere pleaded, lulled the substitute Trustee into inactivity, and he actively joined in a continuation of the concealment of the former Trustee's fraud. He did not know what his rights were, and assumed and believed that Peckham had the right to deal between himself individually and himself as a Trustee without authority from, or notice to his stockholders. He further believed that he had no alternative as Trustee but to accept the properties that Peckham had conveyed to his trust, nor did he know that he could do other than to claim Marlborough Addition and/or its stock equivalent in the Texas Investment Company. He was without counsel and without advice when, with J. T. Harrell and the bank's lawyer, a stockholders and directors meeting was called and he was elected President of Texas Investment Company, was issued as Trustee one-half of the capital stock of the corporation, which in the meeting he indorsed as collateral security to the note herein sued upon, and which note he also indorsed as substitute Trustee. He subsequently renewed it some three or four times and paid thereon moneys of the Trust at a time when he was wholly oblivious to his rights and when he was joined in an effort to further conceal the facts from the stockholders.

59 30.

Finally when the bank had gotten him to renew several times the 1926 notes and the Texas Investment Com-

pany notes, had gotten him to accept stock in Marlborough Addition and had written up the minutes under the direction of counsel for the bank, and when the Trust had been tied in every possible way that under the circumstances it could be tied without disclosing to the stockholders what had transpired, the bank filed suit to collect the notes, first selling under the pledge all of the capital stock of Texas Investment Company to the bank and here suing for a deficiency existing after applying against the notes the bid of the bank.

31.

The bank then sued out an application for the appointment of a receiver and persuaded a District Judge improvidently to appoint such receiver, and which receiver took from the possession of said substitute Trustee all of the books and records of the Company and the possession of all of the assets of the Company.

32.

It was at this time that the substitute Trustee for the first time sought advice to determine what rights, if any, the stockholders had, and what duties, if any, he owed the stockholders in protecting them against the former frauds of his deceased friend. It was then for the first time that Scannell disclosed to any attorney the facts and circumstances herein elsewhere pleaded. Thereupon, and without delay, the substitute Trustee answered the bank's suit, pleading want of consideration and non est factum to the obligation declared upon by the bank, pleaded the facts herein pleaded in cross action against the bank and advised by letter the stockholders of what had transpired and what action he had taken, the stockholders by letters commending his action in bringing the suit.

33.

The checks above specifically pleaded as having been wrongfully charged against the Trust deposit and credited to the private account of the Trustee through the facilities of the bank and its active participation in the fraud, as well as items pleaded above as having been so diverted between the date G. W. Peckham qualified as Trustee and October 8, 1925, were wholly inoperative to lessen the Trust's deposit balance with the bank, each transaction being wholly without authority, and no demand and refusal to pay such monies by the bank so deposited has ever heretofore been made as to items occurring prior to October 8, 1925, and no demand for items subsequently occurring was made either during Peckham's lifetime nor during the period of concealment by the substitute Trustee, nor prior to the filing of the original cross action herein. Thus cross complainants now charge that $200,000.00 of Trust funds were deposited in plaintiff bank, and no authorized demand and payment thereof has ever been made, and the plaintiff bank is justly indebted to cross complainants, as their deposit balance, in the sum of $200,000.00. This suit then is brought as well for the recovery of said deposit balance as for the bank's active participation with G. W. Peckham in breaches of trust.

34.

Cross complainants say that not a single stockholder of Wichita Royalty Company, other than the Trustee, ever knew, prior to the institution of this suit, of any of the facts herein pleaded; that such facts were concealed from them; that such facts were well known to the bank, its officers, agents and employees; that the facts were themselves self-concealing; that the bank knew the monies deposited to Wichita Royalty Company's account were trust funds and that G. W. Peckham was but the Trustee thereof, representing parties beneficially inter-

ested and in the fiduciary capacity. The bank further knew that the Trustee had no right to use trust funds for personal purposes. The bank knew that Peckham had a personal account in the bank, a deposit checking account and also a note or liability account. It knew that Peckham over a long period of time, and in a series of transactions, all having the same character and involving the same element or plan was transferring large
61 sums of money from the Trust account to his personal account and usually at times when his personal account was in need of additional funds. The bank actively and knowingly aided him in making the transfer. Most of the checks were made payable to the bank's order. The bank knew the Trustee was commingling Trust funds with his personal funds, and knew that it was actively assisting him in doing so. It knew that Peckham was drawing checks on his personal account for personal purposes, an account which it knew was commingled funds. It further knew that every payment made from the commingled account for personal purposes would amount to a wrongful conversion of Trust funds. It knew that Peckham was indebted to it in large sums of money and that he was making payment on this debt from time to time to the bank by drawing checks on his personal account, which it knew was commingled funds of personal funds and Trust funds. It knew that he was using trust funds to pay a private debt. It knew that Peckham's personal credit rating would be increased by its participation with the Trustee in transferring Trust funds to Peckham's relatively small personal balance, monies which the bank knew he did not own. The bank aided him in making these transfers and then accepted his checks in payment of his personal debt to the bank.

Cross complainants further state that at the very beginning of his trusteeship G. W. Peckham was so derelict in the discharge of his duties as Trustee as that he forfeited any right to compensation in any amount

in that he "failed to use ordinary care in his administration, was guilty of gross negligence, repudiated the trust and claimed the property as his own, misappropriated trust funds, failed to keep proper records of trust administration, failed to account, filed an inaccurate or false account, made illegal investments, failed to invest trust property, mingled trust property with his own, was guilty of conduct warranting removal, was guilty of disloyalty to the cestuis in that he acted for his
62 own selfish interest, and failed to protect the Trust's property." See Trusts and Trustees, by Bogert, Vol. 4. Section 979, Pages 2879-2881 and cases there cited. Of Trust funds deposited to the account of and belonging to Wichita Royalty Company, G. W. Peckham transferred approximately $30,000.00 thereof to his private account, causing the books to show that such aggregate sum was made up of monthly payments of four or five hundred dollars each month as a salary, and while if the Trust had been administered by him faithfully he would, in an accounting, have been entitled to reasonable compensation, yet by reason of the way and manner in which he did administer the Trust he is, in accounting, entitled to no salary, and the plaintiff bank, having received a portion of such Trust funds in payment of Peckham's personal debt, and having received other and different funds in such payments, and having had actual knowledge and constructive notice of Peckham's lack of fidelity and of his agency's having determined, there was no authority for the salary checks to be drawn, for the transfers to be made and for the Trust to be charged therewith, the receipt of such monies being a misappropriation by the Trustee through the facilities and with the active participation by the plaintiff bank.

35.

The Supreme Court of Texas, among other holdings, has definitely decided that if and when it be shown, as

upon the other trial it was shown and upon this trial will be shown, that Peckham paid to the bank upon his personal debt any part of the moneys transferred from the Trust account to his own, that thereby the bank became an active participant in Peckham's misappropriations and was liable thereafter for every dollar of Trust funds transferred to Peckham's personal account that was not used for an authorized Trust purpose, excluding any transaction in which he had a personal interest. Such holding of the Court is thus quoted:

"It is apparent from what has been stated that the amount of the bank's liability is the difference between the total amount of the deposits for which Peck-
63 ham's personal account received credit after he began commingling trust funds with his own on October 8, 1925, and the total amount of withdrawals therefrom which the bank may show were used for authorized trust purposes. It conclusively appears that the bank is not entitled to credit for expenditures out of the commingled account for the purchase and improvement of Marlboro, or those transactions wherein Peckham acted in the dual role of buying as trustee from himself personally. * * *"

"In January and March, respectively, 1926, Harrell cashed Peckham's checks aggregating $15,088 in payment of a pre-existing indebtedness originating in Peckham's purchase from Harrell and Basham of the Stephens Royalty. Such payments were made by means of checks issued by Peckham upon a personal account in which Harrell knew both trust and personal funds were being deposited. Knowledge was thereby visited upon him of the trust nature of what he received in payment of Peckham's indebtedness. Harrell testified that "it was all alike" to him "whether the trust account was carried in the name of Wichita Royalty Company or G. W. Peckham," but inquiry pursued with reasonable diligence by Harrell in connection with Peckham's subsequent

dealings in which Harrell was also interested, including Marlboro, would have disclosed that Peckham was using trust funds in purchasing an interest in, and in improving, that addition. The measure of Harrell's liability to the trust is therefore determined, as a matter of law, on the basis of his actionable participation with Peckham."

Thus upon the re-trial, inquiry will be made as to when the bank received from the commingled account of Peckham payment upon the Trustee's private debt any amount, whether large or small, of moneys belonging to Wichita Royalty Company. As pleaded above, it will be definitely shown that short upon Peckham's becoming Trustee in 1923 the bank first received Trust funds in payment upon Peckham's personal debt to the bank, and thus, as has become the law of the case, the bank is liable thereafter for all funds transferred from the Trust account to Peckham's personal account and not used for authorized Trust purposes, excluding, of course, as held by the Supreme Court, transactions in which Peckham was personally interested. Thus this amendment pleads the misappropriations for 1923, 1924 and prior to October 8, 1925, demand for the restoration of which is now being made for the first time, whereas pleading heretofore sought but to recover misappropriations from and after October 8, 1925.

64

It has heretofore been demonstrated of record and admitted by the bank in writing that the first payment of Trust funds upon Peckham's private debt was no later than February 13, 1926, and by reference to Page 7, supra, the parties litigant can determine that practically all of the items sued for originally were transferred to Peckham's private account subsequent to such date. At Page 72 of the bank's brief in the Court of Civil Appeals upon the former trial, laid down the bank's contention that

"In order to determine whether or not the bank did receive any Trust funds, and the amount received, if

any, the rule to be applied is that when Trust money has been deposited in a joint account, in order to determine how much remains of said Trust fund on a given date, the minimum balance existing between that date and the date when the Trust funds were deposited, is the amount remaining and identifiable as trust funds."

Such rule, supported as a correct principal of law in Maryland Casualty Co. vs. City National Bank, 29 F. (2d) 662, is applied to the facts as developed upon the first trial in this language quoted from the bank's brief at Page 178-179.

"The first payment which the bank received from the G. W. Peckham account, with which it is alleged by the Appellant the trust funds were commingled, was November 17, 1925, in the amount of $1,007.23. (Brief of Appellant, pages 6-8.)

"The record does not disclose the minimum balance in the joint account between October 8, 1925, and November 17, 1925, the date of the first payment to The City National Bank, but if it be granted for the sake of argument, that there was enough of the trust funds on hand at the time this payment was made to pay the amount in full to the bank, by applying the rule set forth in this Counter Proposition, the bank would then be liable to the beneficiary in the sum of $1,077.23.

65 "The bank received no further payments from the joint fund from November 17, 1925, until February 13, 1926, at which time it received payment in the amount of $550.00.

"In the meantime, according to Appellant's claims, Peckham had diverted from the Wichita Royalty Com-

pany's account and deposited in his individual account, the following sums:

Check No. 451—dated 12-28-25—in the amount of	$ 1,250.00
Check No. 452—dated 1-4-26—in the amount of	5,000.00
Check No. 458—dated 1-11-26—in the amount of	5,000.00
Check No. 461—dated 1-18-26—in the amount of	15,769.07

"The minimum balance in the joint account from January 18, 1926, the date of the last deposit of alleged trust funds in the joint account. to February 13, 1926, the date of the next payment to The City National Bank, is found to be, on February 2, 1926, the sum of $1,872.46.

"Hence, under the rule quoted in the above Counter Proposition, the whole payment to the bank would be from trust funds, and the bank would be liable in the sum of $550.00, which would be added to the above amount."

That thus upon the bank's records introduced in evidence upon the former trial and preserved by photostatic copies thereof, it was definitely established, and the bank so admitted, that on February 13, 1926, the bank received Trust funds to apply on Peckham's private debt. It thus follows that from and thereafter the bank is liable, as a matter of law, for unauthorized transfer and use of Trust funds by Peckham. It will, of course, be shown that similar payments were received during 1923, 1924 and subsequent years, all of which will be more specifically pleaded in an amendment later to be filed. It will likewise be demonstrated and specifically pleaded that such payments were so received by the bank near the very beginning of Peckham's trusteeship, and that from the bank records themselves it conclusively appears that such funds were so received under any rule of law

or method of computation suggested by any jurisdiction or text book writer, whether it be the minimum balance rule as contended for by the bank or other principals and methods.

66 36.

That The City National Bank of Wichita Falls, Texas, charter No. 4248, subsequent to the filing of this suit and prior to March 2, 1933, became, and on said last named date was insolvent, and having closed its doors March 2, 1933, because of such day's being a holiday, it never again opened its doors for business because by Presidential Proclamation and Treasury Regulations it was not permitted thereafter to do business because of its insolvent condition. At the time its doors were finally closed and long after it had become insolvent said plaintiff bank was indebted to cross complainants in the amounts herein elsewhere shown.

While insolvent and in contemplation of continued insolvency, and on the 15th day of March, 1933, and at a time when it had ceased to do business for approximately two weeks, said plaintiff bank transferred, assigned and pledged its assets to the newly created National Banking Corporation. City National Bank in Wichita Falls, charter No. 13,665, which bank was chartered on March 15, 1933. The terms and provisions of the contract between said banks on March 15, 1933, are well known to all parties to this litigation, and while such agreement will be in a subsequent amendment more specifically pleaded, yet it is but now referred to and made a part hereof as fully as though copied herein.

The Directors of the old bank participating in the Board's meeting whereby such contract was authorized and directed were L. H. Cullum, J. T. Harrell, Lesley Humphrey, Jack Jeffus, Oral Jones, Frank Kell, Joe Kell,

J. J. Perkins, C. W. Snider and F. P. Timberlake, from among whom the Officers and Directors of the new bank were selected, and the new bank knew the details of this litigation and knew of the indebtedness due cross complainants by said old bank, and knew the facts and circumstances giving rise to such liability.

It was the intended purpose of the Directors of the old bank to prefer certain creditors of the old bank and to transfer and hypothecate all of the assets of the old bank to the new bank that certain creditors might be paid in full to the exclusion of any payment whatsoever to cross-complainants.

67

37.

Such contract so entered into for such purpose and, were it legal, resulting in preferring certain creditors to the prejudice of cross-complainants as creditors of the old bank, was and is ineffectual and void, and the officers and agents of the new bank knew and/or were constructively charged with notice that no title to any of such assets passed to the new bank and that such directors of the old bank became, upon the insolvency of the old bank, trustees for the creditors and stockholders of the old bank, and such directors, as such trustees, and in whom the title to all of the assets of the insolvent bank vested, were without power or authority to make preferences, and their action in so doing was void, and their disposing of any property was a breach of their obligation to creditors, for which they are personally liable, and upon which liability suit is brought. Such transaction between the old and the new banks and the acts of the directors with respect thereto in thereby seeking to prefer other creditors to the prejudice of cross-complainants, were void both under the Texas law and the Federal law;

Under the Texas Law

(a) It is the law that though a National Bank is the creature of and is chartered by the Federal Government, yet National Banks doing business in Texas are subject to and controlled by the State law. See June 8, 1936, Advance Sheet of the Federal Reporter in National City Bank of New York vs. Continental National Bank & Trust Company of Salt Lake City, 83 Federal (2) 134, where the Circuit Court of Appeals for the 10th Circuit so held with quotation therein from McClellan vs. Chipman, 164 U. S. 347, 41 L. Ed. 461 as follows:

"National Banks 'are subject to the laws of the State, and are governed in their daily course of busi-
68 ness far more by the laws of the State than of the Nation. All their contracts are governed and construed by State laws. Their acquisition and transfer of property, their right to make their debts, and their liability to be sued for debts, are all based on State law.' * * *"

See Anderson vs. Gray, 281 F. 770, cited with approval April 8, 1936, in Bank vs. Bank, 83 F. (2d) at page 138, which we quote:

"Whether a conveyance will be held fraudulent as to creditors will be determined through the interpretation of the local statutes by the Federal Courts."

(b) The Texas law applying, it is settled that said transfer and preference were void under the Texas law because upon the Corporation's insolvency its assets became a trust fund for the ratable benefit of all of its creditors. See 11 Texas Jurisprudence 84, Section 421, and the Supreme Court Cases of Texas, supporting the principal that:

"The directors and officers of the corporation are at all times individually liable for any misapplication of the corporate assets. If the corporation is insolvent—a cardinal point being that it has ceased to transact ordinary business—the assets are considered in law to be trust property. They cannot then be legally transferred to or encumbered in favor of creditors in satisfaction of debts due by the company; nor can a creditor obtain preference for his debt by garnishment or attachment, or by any form of execution under a judgment."

The Trust Fund Doctrine is stated in 10 Texas Jurisprudence 680 et seq.:

" 'Now the doctrine that the officers of the corporation at all times owe a fiduciary duty to the stockholders and existing creditors is well supported by the Texas decisions,' and it is upon 'the insolvency of the corporation and the cessation of its business that the officers are trustees in the sense and with the implication that those dealing with the corporation through them as its representatives must treat them as trustees. A lien in favor of all creditors of the corporation then attaches to the corporate assets. Thereafter the corporation lacks power, and its officers are without authority to
69 dispose of its property except by way of liquidation for the benefit of all creditors equally.' * * *"

Under the Federal Law

(a) Under the plain direction of the Federal statute the attempted transfer, pledge and assignment of the old bank's assets to the new bank, with its resulting preference to the prejudice of cross-complainants, is void. We quote from Title 12, Section 91, United States Code Annotated:

"Transfers by bank and other acts in contemplation of insolvency. All transfers of the notes, bonds, bills of ex-

change, or other evidences of debt owing to any national banking association, or of deposits to its credit; all assignments of mortgages, sureties on real estate, or of judgments or decrees in its favor; all deposits of money, bullion, or other valuable thing for its use, or for the use of any of its shareholders or creditors; and all payments of money to either, made after the commission of an act of insolvency, or in contemplation thereof, made with a view to prevent the application of its assets in the manner prescribed by this chapter, or with a view to the preference of one creditor to another, except in payment of its circulating notes, shall be utterly null and void; and no attachment, injunction or execution, shall be issued against such association or its property before final judgment in any suit, action, or proceeding, in any State, county, or municipal Court."

(b) That the old bank was insolvent prior to and on March 2, 1933, as well as on March 15, 1933, is conclusively demonstrated by applying the law to existing facts. See Advance Sheet of the Federal Reporter of June 8, 1936, and the reported case of Kullman & Co. vs. Woolley, 83 F. (2d) 129, decided by Circuit Court of Appeals for this particular district.

That the Federal law is the same as the Texas law, supra, is demonstrated in the May 27, 1936, Advance Sheet of the North Eastern Reporter in the case of Miller vs. Bank, 1 N. E. (2d) 671, 677, from which we quote:

"In our opinion the rule with regard to National banks is not that they, like private corporations or individuals, may prefer certain creditors, but that an assignee bank which takes over the liabilities of a National Bank, which is in contemplation of insolvency, becomes liable to every person who might be found to be a depositor, and that the liability of the assignee bank is not limited to such deposit liabilities as are listed and acknowledged. Baird vs. First National

Bank (1927) 55 N. D. 856, 215 N. W. 810, 56 A. L. R. 200; Riegel vs. Planters' State Bank (1924) 100 Okl. 42, 227 P. 105. A proper action to enforce such an unlisted claim in our opinion is an equitable proceeding against the assignee bank which has taken over all of the real assets of the old bank. Chicago, I. & S. R. Co. vs. Taylor (1915) 183 Ind. 240, 108 N. E. 1; Okmulgee Window Glass Co. vs. Frink (C. C. A. 1919) 260 F. 159; Dobb et al. vs. Interstate Mortgage Co. Corporation (C. C. A. 1927) 20 F. (2d) 786."

This case was decided by the Appellate Court of Indiana against a successor bank under a contract similar to the one between the banks herein and wherein the new bank assumed and agreed to pay "only the depositors of the National Bank shown by the general ledger." The Court held that while in Indiana the Trust Fund Doctrine did not obtain (as it does in Texas) yet under the Federal law the same result is reached.

38.

Thus the new bank did not obtain title to the assets transferred to it except subject to the cross-complainants' rights, along with other creditors, to have the directors of the old bank, J. T. Harrell as Trustee of the old bank's assets and the new bank account for all of the assets of the old bank as of March 2, 1933, and to ratably distribute among all creditors such assets and to respond to cross-complainants for the amount of their debt against the old bank should the facts disclose that said directors and the said new bank have on hand less than sufficient assets in value to pay cross-complainants. All of which liability attaches and is justiciable aside from and before resort to the double liability of the stockholders of the old bank, which latter cause of action will arise upon judgment's being rendered herein.

71 That the debt due cross-complainants by the old bank was well known to the new bank on March 15, 1933, and to the directors of both the old and new bank, and no provision was made in said agreement nor has an agreement since been made for the payment of such other outstanding claims and liabilities including the claim herein asserted as existed on March 15, 1933.

39.

The old bank appointed C. E. Basham liquidating agent, and upon his resignation thereupon appointed E. A. Denton such officer, who is now functioning as such liquidating agent of the old bank, with J. T. Harrell named and designated as trustee of all of the assets of the old bank pledged to but not delivered into the custody of the new bank, and the old directors and such liquidating agent and former trustee, and all of said transactions were made with the view to prevent and unless assailed to result in an unequal distribution of the assets of the old bank to the prejudice of cross-complainants and such other, if any, creditors as then existed. That much of the assets of the old bank has been liquidated with numerous creditors paid in full, whereas these creditors suing herein have received nothing. And they now sue for themselves and all other creditors similarly situated, and invoke the general equity power of the Court to assert the liens upon all such properties for an accounting, for a restoration of such trust funds as may have been dissipated and/or paid to creditors above their ratable interest therein for the determination of the amount of personal liability of the old directors and for judgment thereon, all with the view and to the end that cross-complainants be accorded an equal participation in the assets of the old bank as every other creditor has or may obtain.

The amounts recoverable herein having been determined by the Supreme Court of Texas to bear interest

from demand evidenced by the filing of suit therefor, and liability from and after October 8, 1925,
72 having been asserted by suit therefor February 14, 1931, and liability for amounts occurring from January 1, 1923, to October 8, 1925, being now asserted for the first time, it is manifest that such respective amounts should bear interest from said respective dates of filing of said pleadings, and while the Supreme Court but permitted the recovery of interest thereon without expressly fixing the rate therefor, yet it is the law that the highest legal rate is chargeable in such cases as this and, therefore, cross-complainants now sue for interest upon the several amounts for said respective periods of time at the highest legal rate in Texas of 10%, compounded as provided by law. See Supporting Authorities Collated in Vol. XIV, Texas Law Review, Pages 126 et seq.

40.

The directors of the old bank who are sued herein, and perhaps other stockholders unknown to cross-complainants but well known to the other parties hereto, long prior to March, 1933, and at a time when the capital of the old bank had become impaired, and the same was in fact insolvent and was, as well, in contemplation of insolvency, and for the purpose of keeping the doors of the bank open and the bank functioning a while longer, personally borrowed upon their own credit from strangers to this suit large sums of money and paid the same into the old bank. The old bank was not a party to the borrowing of such money and was not liable as principal or otherwise to the persons from whom and the corporations from which said monies were borrowed by the stockholders and directors individually. Later, however, such directors and stockholders so personally borrowing money and advancing the same to the old bank were repaid by the banks herein involved in amounts and at times presently unknown to cross-complainants, but will

be ascertained and specifically pleaded in pleading later to be filed. Whereby and wherefrom it is manifest that such directors, defendants herein, undertook to prefer themselves among the bank's creditors at a time when they were trustees for all of the creditors of the
73 old bank, and their acts in so doing transgressed their authority and were in breaches of trust with respect to their obligations to all creditors. Therefrom arises a personal liability as to each and every director-defendant to restore and pay in to the trust fund, for the benefit of creditors, the payments made by the banks to them to the end and with the view that all creditors be permitted to participate in the assets of the old bank ratably, and that the preference thus sought by directors in their own favor at a time when they were charged by law of distributing the assets ratably between all creditors be declared illegal and void, and these creditors, along with all others, share in the ratable distribution of the assets of the old bank.

41.

Remembering that the Texas law applies to National banking corporations as well as to private corporations, as demonstrated by the Federal and State authorities, supra, it is manifest that said directors of the old bank, charged by law with ratably distributing the assets of the old bank among all creditors without preference to any, are personally liable to cross-complainants for the debt herein declared upon, such conclusion being plainly manifest from the decision of the Great Justice Gaines of the Texas Supreme Court in the case of National Bank vs. Texas Investment Company, 74 Texas 421, from which we quote:

"When one corporation transfers all its assets to another corporation and thus practically ceases to exist, without having paid its debts, the latter corporation takes the property subject to a lien in favor of the creditors of the

old company. This doctrine is distinctly asserted in 1 Jones on Liens, Sec. 85, et seq., and is supported by the following cases: Brum v. Ins. Co., 16 Fed. Rep., 140; Hibernia Ins. Co. v. Transportation Co., 13 Fed. Rep., 516; Harrison v. Ry. Co., 13 Fed. Rep., 522; Henson v. Britton, 88 Mo., 549; Blair v. Ry. Co., 24 Fed. Rep., 148; Fogg v. Ry. Co., 17 Fed. Rep., 871. * * *

74 "It is complained that the Court erred in sustaining the demurrers of the Traders National Bank and of H. C. Edrington. In so far we think the assignment is well taken. The petition averred that the 'Texas Investment Company,' being insolvent, transferred its assets to the 'Texas Investment Company, Limited'; that in consideration thereof the latter agreed to pay the debts of the former; that among the assets so transferred were 228 shares of the capital stock of the New Mexico Land & Cattle Company, and that the Traders National Bank and Edrington, with a full knowledge of the facts, had possessed themselves of said property, and that it had been pledged to the bank for borrowed money; that by reason of the premises the bank had made itself a trustee of the stock for the benefit of the creditors of the 'Texas Investment Company,' and that with the assistance of Edrington, a director, it had made some kind of transfer of the stock without applying the proceeds to the purposes of the trust. It follows from what we have heretofore said that if these facts be true that Edrington and the bank have made themselves liable to account to the creditors of the Texas Investment Company for the value of the shares so appropriated. * * *

"We are of the opinion that if, as alleged, the directors of the Texas Investment Company, Limited, misapplied the assets conveyed to it by the old company, they rendered themselves individually liable to the creditors of the latter to the extent of the assets so misapplied. * * * "

42.

While cross-complainants would not think of charging any director-defendant with a willingness to plead the technical defense of limitation to a debt to be determined justly due and owing by him, yet, if pleaded, such defense would be unavailing for many reasons, but one of which is thus pleaded:

As shown above, said director-defendants were agents and trustees of all of the creditors of the old bank and, as such, were charged by law with the duty of discharging such agency and exercising such trusteeship in the utmost good faith, holding and distributing properties coming into their hands in strict conformity with the applicable law stated above so that all creditors might ratably participate in such trust fund, of which the director-defendants were the agents for all of the creditors of the old bank. Cross-complainants relied upon the
75 director-defendants and said banks to discharge their respective agencies and to regard their trusteeship, and cross-complainants had no notice, knowledge or information of any kind or character that such agents and trustees had or would fail to comply with every requirement of law imposed upon them as such agents and trustees, but relied implicitly upon their business acumen and fair dealing, and were lulled into inactivity by reason of repeated statements by the director-attorney for the bank that if and when Wichita Royalty Company recovered a judgment against the bank it would be paid.

Furthermore, there was no duty resting upon cross-complainants to make inquiry or to inquire into the fidelity of the director-defendants to determine whether in fact they were discharging the several duties imposed upon them by law. All of which they had a right to do as the Supreme Court of Texas has determined in this very case, and as reflected on Page 406 of the 89 S. W. (2d), wherein it was held that cross-complainants

"were under no duty to check the conduct of Peckham, the bank, and Harrell. As expressed by Chief Justice Hickman (now commissioner), in reversing and rendering judgment for a principal in Security State Bank v. Burton (Tex. Civ. App.) 10 S. W. (2nd) 201, 204, writ of error refused: 'No such duty (to check up the conduct of an agent) rested upon appellant. It had the right to rely implicitly upon the good faith of its agent, and owed no duty whatever to investigate the acts of its agent, in order to determine whether such agent was truly representing it.' * * * "

43.

Among the assets owned and possessed by the old bank is all of the land and those premises known as Marlborough Addition to the City of Wichita Falls, Texas, and those lands standing in the name of Texas Investment Company, because the old bank acquired and still owns all of the capital stock of Texas Investment Company and equitably owns and is entitled to the possession of all lands, personal property and choses in action standing in the name of Texas Investment Company, in-
76 cluded in which are the unsold lots of Marlborough Addition, and the equitable title to all lands heretofore sold therein but unpaid for by the purchaser thereof, as well as all notes and accounts receivable and liens upon said land securing obligations. The Texas Investment Company is, therefore, made a party hereto that the title to all of its assets be declared to belong to the old bank, and for the fixing and foreclosing of an equitable lien thereon in favor of cross-complainants and for general and special relief with respect thereto, for which prayer is made.

44.

G. W. Peckham was insolvent at the time of his death, and his Estate is still insolvent, and Wichita Royalty Company has retained and still retains properties con-

veyed to it in breach of trust, excluding those specifically tendered above, under a claimed and asserted lien thereon to secure it in payment of the indebtedness justly due and owing it by G. W. Peckham at the time of his death. And upon their subsequently amending their pleading, cross-complainants will more particularly plead with respect to such properties of the income therefrom, the application thereof and the facts relating thereto.

45.

Cross-complainants say that those who are sued herein are justly indebted to cross-complainants in the sum of $200,000.00, that the diference between the monies belonging to the trust deposited with the old bank and such funds as were withdrawn therefrom rightfully is $200,000.00, and that the indebtedness arising in cross-complainants favor from and after the bank's first notice of Peckham's breaches of trust, and from and after Harrell's first having notice thereof, by reason of the matters and things herein elsewhere shown and in which the bank and Harrell actively participated, with liability attaching therefor, is $200,000.00, and that such liability arising prior to October 8, 1925, bears interest from the date of the filing of this amendment at the rate of 10% per annum, and the liability arising thereafter bears interest at 10% per annum from February 14, 1931.

77

46.

Cross-complainants say that with a view to preventing cross-complainants from prosecuting this litigation and in an endeavor to extort from cross-complainants the obligations declared upon by the bank, for which no obligation rested upon the trust, a series of acts and conduct was pursued, beginning with placing the trust and all of its assets and properties in receivership, and the writing

of letters to all purchasing companies of oil accruing to cross-complainants, requesting the withholding of payment for oil purchased from such properties, the obtaining of judgment and its abstracting in several counties of the state, filing of a suit in Oklahoma, and the running of an attachment against all of the trust's Oklahoma properties, and generally taking such steps as to thwart an appeal by the trust from an adverse judgment, but notwithstanding which the appeal was prosecuted, judgment vacated, the Oklahoma suit dismissed, garnishment suit against several purchasing companies dissolved, with recovery by the trust of legal interest on the funds impounded by garnishment, although there are other funds still impounded, and in furtherance of said purpose the bank has now made certain oil companies parties hereto so that the trust will be further hampered in the trial of this case.

47.

Therefore, cross-complainants now sue Humble Oil & Refining Company, a corporation, with office and agents in Harris County, Texas; Continental Oil Company, a corporation, with office and agents in Tarrant County, Texas; and The Texas Company, a corporation, with office and agents in Tarrant County, Texas; and Leslie Humphrey, a resident of Wichita County, Texas; and say that said corporations are justly indebted to Wichita Royalty Company in large sums of money which
78 are increasing from month to month by reason of current purchases of oil produced from properties in the name of Wichita Royalty Company, and cross-complainants have been without the use of said monies for a long period of time to damage in the amount of 6% per annum thereon. No valid and legal reasons existed, nor does any such reason now exist, for the withholding of payment by said purchasing companies of the proceeds of said oil, and either such companies and/or the bank and its director-attorney, Leslie Humphrey, are liable to cross-

complainants for damages sustained in the unlawful withholding of such payments, for which suit is brought, and for the recovery of which prayer is made.

48.

The bank has been and is represented by Leslie Humphrey and Tarlton Morrow, resident citizens of Wichita County, Texas, who, while said bank was insolvent and at a time said counsel knew of such insolvency, each received substantial monies, the amount of which and the time of receiving same being unknown to cross-complainants but well known to them, and the result thereof was to make of them a preferred creditor of the bank to the prejudice of cross-complainants; and Wichita Royalty Company now complains of them and asks that they be required to account for every dollar so received from said bank, pending this litigation, and that the same be restored to the trust fund from which it was taken to the end that they be not preferred as creditors of the old bank but that cross-complainants be permitted ratably to participate in all of the assets of said bank. Tarlton Morrow is, therefore, made a party hereto, upon the allegation that his residence is in Wichita County, Texas, and that he is liable to cross-complainants in the manner and to the extent last above shown, and for judgment thereon prayer is respectfully made.

49.

Wherefore prayer is made:

79 (a) That plaintiff take nothing by its suit and that all costs be taxed against the plaintiff.

(b) That cross-complainants recover of and from the parties sued herein, jointly and severally, the sum of

$200,000.00 with interest from the date of the filing of this amendment at 10% upon that portion thereof arising prior to October 8, 1925, and for such interest upon the remaining portion thereof from February 14, 1931.

(c) That an accounting be had between all parties hereto and that each and every party litigant be required to state that which has been received and that which has been expended with respect to the money matters herein involved.

(d) That the old bank be declared to have been insolvent when payments were made by it to the several parties hereto, and that its assets be decreed to be a trust fund for the benefit of all creditors, and that such creditors, parties hereto, who have been preferred be required to restore the amounts received to the trust fund. That all creditors of the old bank be given notice of the pendency of this suit and permitted to intervene herein and set up their rights with respect to such trust fund, and that such fund be ratably distributed between the creditors of the old bank existing at its insolvency.

(e) That cross-complainants have judgment against the several parties hereto in the particulars and for the amounts, with interest thereon, as herein above set out.

(f) That all costs of suit be taxed against those shown to be liable to cross-complainants, and that cross-complainants be discharged from payment of any cost.

(g) And that cross-complainants be accorded such other and further, general and special, legal and equitable relief to which they may be entitled.

KILGORE & ROGERS,
Attorneys for Cross-Complainants.

80 State of Texas,
County of Wichita.

E. E. Scannell, on oath, says that he is Trustee of Wichita Royalty Company, has read the above and foregoing amended pleading, and that the facts therein stated are true.

E. E. SCANNELL.

Sworn to and subscribed before me this, the 18th day of June, 1936.

GRACE JARNAGAN,
(Seal) Notary Public, Wichita County, Texas.

Indorsed: Number 24549-A, The City National Bank of Wichita Falls, Texas vs. Wichita Royalty Company, et al. Third Amended Original Answer, Cross-Action and Inter-Pleader. Filed June 18, 1936, R. L. Sanderford, District Clerk, Wichita County, Texas, by Irving Garner, Deputy.

PETITION FOR REMOVAL OF CITY NATL. BANK, ET AL.

81 Filed July 1, 1936.

(Title Omitted.)

To the Honorable Judge of said Court:

Your petitioners, The City National Bank of Wichita Falls, Texas, a national banking association duly incorporated under the laws of the United States of America; City National Bank in Wichita Falls, also a national banking association duly incorporated under the laws of the United States of America; J. T. Harrell, individually and as trustee of The City National Bank of Wichita Falls, Texas, a corporation aforesaid; Texas Investment

Company, a private corporation incorporated under the laws of the State of Texas; E. A. Deaton, Liquidating Agent of The City National Bank of Wichita Falls, Texas, a national banking association aforesaid; L. H. Cullum, Leslie Humphrey, Jack Jeffus, Tarlton Morrow, Oral Jones, Frank Keil, Joe Keil, J. J. Perkins, C. W. Snider, F. P. Timberlake, and W. H. Peckham, Administrator of the Estate of G. W. Peckham, deceased, come now and file their petition for removal of this cause from the District Court of Wichita County, Texas, for the 30th Judicial District of Texas, wherein said cause is now pending, to the District Court of the United States of the Northern District of Texas for the Wichita Falls Division, held in the City of Wichita Falls in said district and state, and for grounds for said removal say:

I.

That The City National Bank of Wichita Falls, Texas, and City National Bank in Wichita Falls are each national banking associations created and incorporated
82 under the laws of the United States of America; that E. A. Deaton is the Liquidating Agent of The City National Bank of Wichita Falls, Texas, acting pursuant to a vote of the stockholders made in accordance with the laws of the United States, Section 181, as amended, of Title 12, United States Code Annotated, and is an officer charged under the laws of the United States with the winding up and liquidation of said banking association; that J. T. Harrell is sued as trustee of said The City National Bank of Wichita Falls, Texas; that the remaining defendants, except W. H. Peckham, Administrator aforesaid, and Tarlton Morrow, are sued as directors of The City National Bank of Wichita Falls, Texas, a national banking association in liquidation; that W. H. Peckham is sued as Administrator of the Estate of George W. Peckham, deceased, and Tarlton Morrow is sued to account for and disclose an alleged preference

received by him from The City National Bank of Wichita Falls, Texas, a national banking association in liquidation; that the cause of action presented against these petitioners is by an independent suit and interpleader filed herein on June 18, A. D. 1936, by the Wichita Royalty Company a trust estate, and E. E. Scannell, its Trustee, plaintiffs in said cross-petition and interpleader against the petitioning defendants herein.

II.

That the above entitled action, cross-petition and interpleader aforesaid is of a civil nature and in equity, and is a suit which arises under the Constitution and laws of the United States, in that this case involves a Federal question and questions as follows:

That it is a suit commenced against a national banking association, namely, The City National Bank of Wichita Falls, Texas, and E. A. Deaton, its Liquidating Agent, as well as J. T. Harrell, its alleged trustee, for
83 the winding up of the affairs of such bank and to equitably distribute its assets among all of the creditors of said bank, as is apparent from said cross-petition and interpleader filed herein.

That it is a suit arising under the Constitution and laws of the United States in this: It is a suit to establish a deposit liability of $200,000 in favor of the plaintiffs Wichita Royalty Company and E. E. Scannell, its trustee, and against The City National Bank of Wichita Falls, Texas, and its Liquidating Agent, E. A. Deaton, whose duties arise under the Constitution and laws of the United States in liquidating the said bank and to declare void as a preference certain assets assigned and transferred by The City National Bank of Wichita Falls, Texas, to the City National Bank in Wichita Falls, and to the other named defendants joining in this petition for removal, except that defendant W. H. Peckham, Administrator

aforesaid, that is to say, it is so alleged in said petition that The City National Bank of Wichita Falls, Texas, is a national banking association chartered under the laws of the United States and it is alleged that it became insolvent on March 2, 1932, and closed its doors by virtue of the presidential proclamation and treasury regulations pertaining thereto and was not thereafter permitted to do business because of its insolvent condition; that it alleged that at the time it closed its doors and became insolvent it was indebted to the plaintiffs, Wichita Royalty Company and E. E. Scannell, its trustee, in the sum of $200,000, by virtue of a deposit and deposits of said sum in said alleged insolvent bank; that it is alleged that on the 15th day of March, at a time when it ceased to do business it assigned and pledged its assets to the City National Bank in Wichita Falls, likewise a national banking association created and incorporated under the
84 laws of the United States of America; that the directors, individual petitioners herein, authorized and directed such transfer of said assets and that it was the intention by virtue of said transfer and that said transfer effected a purpose to prefer certain creditors of the old bank, that is, The City National Bank of Wichita Falls, Texas, as against the Wichita Royalty Company and E. E. Scannell, its trustee, and said petition alleges that such transfer was ineffectual and void and seeks to set aside said transfer as a preference in favor of the City National Bank in Wichita Falls and in favor of the other named defendant joining herein as petitioners and for an accounting.

That the suit is brought under and by virtue of Section 91, Title 12, United States Code Annotated, of the laws of the United States of America, to set aside a preferential transfer made by a national banking association now in liquidation, the Liquidating Agent being a party to said suit.

That the suit likewise is against an alleged insolvent national banking association to set aside preferential transfers allegedly made by said national banking association after its insolvency, and to declare a trust upon such assets so assigned in favor of said plaintiffs, Wichita Royalty Company and E. E. Scannell, its trustee, the prayer being to recover a deposit liability allegedly due of $200,000, with interest, for an accounting between The City National Bank of Wichita Falls, Texas, the City National Bank in Wichita Falls, the Liquidating Agent of The City National Bank of Wichita Falls, Texas, and the other petitioning defendants herein, and to declare The City National Bank of Wichita Falls, Texas, insolvent and to treat its assets as a trust fund for the benefit of all creditors and with a prayer that all other creditors be given notice of the pendency of this suit and be permitted to intervene therein; that this cause is
85 therefore governed by the national banking laws of the United States in respect to such claims and claims of the plaintiff Wichita Royalty Company.

Reference is hereby made to the third amended original answer, cross-action, and interpleader filed herein by the Wichita Royalty Company, a joint stock association, and E. E. Scannell, on June 18, 1936, and made a part hereof for all purposes, to show more particularly and accurately the nature of said cross-action and interpleader and which cross-action and interpleader so referred to and made a part hereof shows that this is a suit of a civil nature in equity, arising under the Constitution and laws of the United States.

That the suit, as aforesaid, is one to determine the liability of an allegedly insolvent national bank and to fix such liability against its Liquidating Agent, appointed pursuant to the statutes and laws of the United States of America, and to distribute ratably its assets among its creditors, and to declare as void an alleged transfer and pledge of its assets made at a time when it was allegedly insolvent.

That the rights upon which said suit and action is based are created and determined by the laws of the United States as is more fully shown from the cross-petition and interpleader here referred to.

III.

That the matter in dispute herein, exclusive of interest and costs, exceeds the sum of $3,000 and is the sum of $200,000, as shown by said pleading.

IV.

That the time for pleading to said cross-petition and interpleader, under the laws of the State of Texas and/or any rule of this Court, has not yet expired and your petitioners have not yet appeared or pleaded to said cross-petition and interpleader the Wichita Royalty
86 Company, a joint stock association, and E. E. Scannell, its trustee, had theretofore filed a cross-action against The City National Bank of Wichita Falls, Texas, and J. T. Harrell, but none of the other defendants hereinabove named were made parties to the same and no Federal question relating to the winding up of an insolvent national bank, the distribution of its assets, the matters relating to the creation of preferences were presented in said former pleadings, and this is the first time that any pleading, complaint, or petition has been filed by the said Wichita Royalty Company and E. E. Scannell, its trustee, raising a Federal question, that is, this is the first and only action filed by said cross-complainant which arises under the Constitution and laws of the United States of America, and none of the parties petitioning for removal herein have appeared or pleaded to said cross-petition and interpleader, nor has the time yet expired for such pleading under the laws of this State or any rule of this Court.

V.

That the controversy herein, as to these petitioning defendants is a separable controversy from that presented by the Wichita Royalty Company and E. E. Scannell against the other parties to this proceeding, namely, against William Peckham and George Peckham, minor sons of G. W. Peckham, Robert W. Peckham and Hazel D. Peckham, son and surviving wife, respectively, of G. W. Peckham, deceased, and the Humble Oil & Refining Company, a corporation, The Texas Company, a corporation, and the Continental Oil Company, a corporation; that a complete determination of said controversy can be had without the presence of the last named defendants and that said defendants are neither indispensable nor necessary parties to a complete determination of this controversy between the Wichita Royalty Company and E. E. Scannell, trustee, plaintiffs herein, and the defendants petitioning herein for removal.

87

VI.

Your petitioners herewith tender a good and sufficient bond, conditioned according to law, for their entering into the District Court of the United States for the Northern District of Texas for the Wichita Falls Division within thirty days from the filing of this petition for removal a certified copy of the Record in this action, and for the payment of all costs that may be awarded by said District Court of the United States if said Court shall hold that this action was wrongfully or improperly removed thereto.

Wherefore, your petitioners pray that this Court will proceed no further herein, except to make an order of removal of this cause to said District Court of the United States in and for the Northern District of Texas at the Wichita Falls Division and to accept said bond and

cause the Record herein to be removed to said United States District Court.

THE CITY NATIONAL BANK OF WICHITA FALLS, TEXAS,
By J. T. HARRELL, President,
CITY NATIONAL BANK IN WICHITA FALLS,
By J. T. HARRELL, President,
J. T. HARRELL,
Individually & Trustee of the City National Bank of Wichita Falls, Texas,
TEXAS INVESTMENT COMPANY,
By E. A. DEATON, President.
E. A. DEATON,
Liquidating Agent of The City National Bank of Wichita Falls, Texas.

FRANK KELL,
TARLTON MORROW,
LESLEY HUMPHREY,
JACK JEFFUS,
L. H. CULLUM,
F. P. TIMBERLAKE,
ORAL JONES,
J. J. PERKINS,
C. W. SNIDER,
JOE KELL,
W. H. PECKHAM,
Administrator of the Estate of G. W. Peckham, deceased.

88 The State of Texas,
County of Wichita.

I, J. T. Harrell, President of The City National Bank of Wichita Falls, Texas, and likewise President of the City National Bank in Wichita Falls, each national bank-

ing associations, on oath deposes and says that said respective banks above named are defendants in the above cause; that he has read the foregoing petition and knows the contents thereof and that the matters and things therein set forth are true, and that he is the President of each of said respective banks and duly authorized to make this affidavit.

J. T. HARRELL.

Sworn to and subscribed before me this 1st day of July, A. D. 1936.

L. A. WARD,
(Seal) Notary Public, Wichita County, Texas.

The State of Texas,
County of Wichita.

E. A. Deaton, President of the Texas Investment Company, a corporation, defendant in the above cause, on oath deposes and says that he is President of the Texas Investment Company, a corporation; that it is a defendant in the above cause; that he has read the foregoing petition and knows the contents thereof, and that the matters and things therein set forth are true.

E. A. DEATON.

Sworn to and subscribed before me, this 1st day of July, A. D. 1936.

L. A. WARD,
(Seal) Notary Public, Wichita County, Texas.

89 The State of Texas,
County of Wichita.

E. A. Deaton, L. H. Cullum, Leslie Humphrey, Tarlton Morrow, Jack Jeffus, Oral Jones, Frank Kell, Joe Kell, J. J. Perkins, C. W. Snider, F. P. Timberlake, and W. H. Peckham, Administrator of the Estate of George W. Peckham, deceased, defendants in the above cause, on

oath each depose and say that they and each of them are defendants in the above cause; that they and each of them have read the foregoing petition and know the contents thereof, and that the matters and things therein set forth are true.

E. A. Deaton further says upon his oath that he is the Liquidating Agent of The City National Bank of Wichita Falls, Texas, and W. H. Peckham says that he is the Administrator of the Estate of G. W. Peckham, deceased.

J. T. HARRELL,
LESLIE HUMPHREY,
JACK JEFFUS,
L. H. CULLUM,
FRANK KELL,
E. A. DEATON,
JOE KELL,
F. P. TIMBERLAKE,
W. H. PECKHAM,
ORAL JONES,
C. W. SNIDER,
J. J. PERKINS,
TARLTON MORROW.

Sworn to and subscribed before me by each of the above named parties this 1st day of July, A. D. 1936.

L. A. WARD,
(Seal) Notary Public, Wichita County, Texas.

Indorsed: Number 24549-A, The City National Bank of Wichita Falls, Texas, vs. Wichita Royalty Company, et al. Petition for Removal. Filed July 1, 1936, at 10:00 o'clock A. M. R. L. Sanderford, District Clerk, Wichita County, Texas, by Edna Berner, Deputy.

NOTICE OF INTENTION TO REMOVE BY CITY NATL. BANK, ET AL.

90 Filed July 1, 1936.

(Title Omitted.)

To Wichita Royalty Company, a Joint Stock Association, and E. E. Scannell, Cross-Complainants, and Kilgore & Rogers and Ray Bland, Attorneys:

You and each of you will please take notice that on Wednesday, the 1st day of July, A. D. 1936, at ten o'clock A. M. the defendants in the cross-action and interpleader filed herein by the Wichita Royalty Company, a joint stock association, and E. E. Scannell, trustee, which defendants are as follows:

The City National Bank of Wichita Falls, Texas,
City National Bank in Wichita Falls,
J. T. Harrell,
Texas Investment Company,
E. A. Deaton,
L. H. Cullum,
Leslie Humphrey,
Jack Jeffus,
Tarlton Morrow,
Oral Jones,
Frank Kell,
Joe Kell,
J. J. Perkins,
C. W. Snider,
F. P. Timberlake,
W. H. Peckham.

will file in the above named Court their petition and bond as required by law for the removal of said cause from the above entitled Court to the District Court of the United States for the Northern District of Texas, Wichita Falls Division, and also a bond in the sum of Two Thou-

sand Dollars ($2,000.00), given on such removal according to law and the requirements of the statutes in such case made and provided, and copies of said petition and bond are herewith served and delivered, and upon the filing of said petition and bond, the defendants aforesaid will present and call to the attention of the said District Court of Wichita County for the 30th Judicial
91 District of Texas, the said petition and bond, and move the said District Court of Wichita County, Texas, for an order of removal of said cause from said District Court of Wichita County, Texas, to the District Court of the United States for the Northern District of Texas, Wichita Falls Division, and the said motion and petition for removal is upon the grounds as stated in said petition and upon said petition and bond so filed and presented.

T. R. BOONE,
Attorney for J. T. Harrell.
LESLIE HUMPHREY AND
TARLTON MORROW,
Attorneys for the other petitioning defendants, except W. H. Peckham, Administrator.
ARCH DAWSON,
Attorney for W. H. Peckham, Administrator of the Estate of G. W. Peckham, Deceased,
By LESLIE HUMPHREY.

Receipt is acknowledged of a true copy of this notice together with a copy of the petition and bond accompanying the same.

KILGORE & ROGERS,
By GUY ROGERS,
Attorneys for Wichita Royalty Company and E. E. Scannell, Trustee.

July 1, 1936, at 9:45 a. m.
E. T. DUFF.

Indorsed: Number 24549-A, City National Bank of Wichita Falls, Texas, vs. Wichita Royalty Company, et al. Notice of Intention to Remove. Filed July 1, 1936. R. L. Sanderford, District Clerk, Wichita County, Texas, by Edna Berner, Deputy.

BOND FOR REMOVAL OF CITY NATL. BANK, ET AL.

92 — Filed July 1, 1936.

(Title Omitted.)

Know all Men by these Presents: That the undersigned, The City National Bank of Wichita Falls, Texas, a national banking association duly incorporated under the laws of the United States of America; City National Bank in Wichita Falls, also a national banking association duly incorporated under the laws of the United States of America; J. T. Harrell, individually and as trustee of The City National Bank of Wichita Falls, Texas, a corporation aforesaid; Texas Investment Company, a private corporation incorporated under the laws of the State of Texas; E. A. Deaton, Liquidating Agent of The City National Bank of Wichita Falls, Texas, a national banking association aforesaid; L. H. Cullum, Leslie Humphrey, Jack Jeffus, Tarlton Morrow, Oral Jones, Frank Kell, Joe Kell, J. J. Perkins, C. W. Snider, F. P. Timberlake, and W. H. Peckham, Administrator of the Estate of G. W. Peckham, deceased, as principals, and the other subscribers hereto, as sureties, are held and firmly bound unto the Wichita Royalty Company a joint stock association operating under a declaration of trust, and E. E. Scannell, trustee, plaintiffs in the cross-action in the above cause against the undersigned defendants, in the sum of Two Thousand ($2,000.00) Dollars, for the pay-

ment of which well and truly to be made unto the said Wichita Royalty Company, a joint stock association operating under a declaration of trust, and E. E. Scannell, its Trustee, their successors and assigns, we do jointly and severally bind ourselves, our heirs, legal representatives and assigns firmly by these presents.

The conditions of the above bond are as follows:

That, whereas, the above bounden The City National Bank of Wichita Falls, Texas, a national banking association duly incorporated under the laws of the United States of America; City National Bank in Wichita Falls, also a national banking association duly incorporated under the laws of the United States of America; J. T. Harrell, individually and as trustee of The City National Bank of Wichita Falls, Texas, a corporation aforesaid; Texas Investment Company, a private corporation incorporated under the laws of the State of Texas; E. A. Deaton, Liquidating Agent of The City National Bank of Wichita Falls, Texas, a national banking association aforesaid; L. H. Cullum, Leslie Humphrey, Jack Jeffus, Tarlton Morrow, Oral Jones, Frank Kell, Joe Kell, J. J. Perkins, C. W. Snider, F. P. Timberlake, and W. H. Peckham, administrator of the Estate of G. W. Peckham, deceased, principals, have filed their petition in the District Court of Wichita County, Texas, for the removal to the District Court of the United States of the Northern District of Texas for the Wichita Falls Division of a certain cause pending in said District Court of Wichita County for the 30th Judicial District of Texas, wherein the Wichita Royalty Company, a joint stock association, and E. E. Scannell, its trustee, are plaintiffs in a cross-action and interpleader filed herein against The City National Bank of Wichita Falls, Texas, a national banking association duly incorporated under the laws of the United States of America; City National Bank in Wichita Falls, also a national banking association duly

93

incorporated under the laws of the United States of America; J. T. Harrell, individually and as Trustee of The City National Bank of Wichita Fals, Texas, a corporation aforesaid; Texas Investment Company, a private corporation incorporated under the laws of the State of Texas; E. A. Deaton, Liquidating Agent of The City National Bank of Wichita Falls, Texas, a national banking association aforesaid; L. H. Cullum, Jack Jeffus, Tarlton Morrow, Oral Jones, Frank Kell, Joe Kell, J. J. Perkins, C. W. Snider, F. P. Timberlake, and W. H. Peckham, Administrator of the Estate of G. W. Peckham, deceased, defendants:

Now, Therefore, if the said The City National Bank of Wichita Falls, Texas, a national banking association duly incorporated under the laws of the United States
94 of America; City National Bank in Wichita Falls, also a national banking association duly incorporated under the laws of the United States of America; J. T. Harrell, individually and as trustee of The City National Bank of Wichita Falls, Texas, a corporation aforesaid; Texas Investment Company, a private corporation incorporated under the laws of the State of Texas; E. A. Deaton, Liquidating Agent of The City National Bank of Wichita Falls, Texas, a national banking association aforesaid; L. H. Cullum, Leslie Humphrey, Jack Jeffus, Tarlton Morrow, Oral Jones, Frank Kell, Joe Kell, J. J. Perkins, C. W. Snider, F. P. Timberlake, and W. H. Peckham, Administrator of the Estate of G. W. Peckham, deceased, shall within thirty days from the date of the filing of said petition for removal enter in the said District Court of the United States a certified copy of the Record in said cause, and shall well and truly pay all the costs that may be awarded by said District Court of the United States if said Court shall hold that said cause was wrongfully or improperly removed thereto, then this obligation shall be null and void; otherwise to remain in full force and effect.

Witness our hands, this 30th day of June, A. D. 1936.

THE CITY NATIONAL BANK OF WICHITA FALLS, TEXAS,
By J. T. HARRELL, President,
CITY NATIONAL BANK IN WICHITA FALLS,
By J. T. HARRELL, President,
J. T. HARRELL,
Individually & Trustee of the City National Bank of Wichita Falls, Texas.

TEXAS INVESTMENT COMPANY,
By E. A. DEATON, President.
E. A. DEATON,

Liquidating Agent of The City National Bank of Wichita Falls, Texas.

95 FRANK KELL,
TARLTON MORROW,
LESLIE HUMPHREY,
JACK JEFFUS,
L. H. CULLUM,
JOE KELL,
F. P. TIMBERLAKE,
ORAL JONES,
J. J. PERKINS,
C. W. SNIDER,
W. H. PECKHAM,

Administrator of the Estate of G. W. Peckham, deceased, Principals.

THE FIDELITY & CASUALTY CO. OF NEW YORK, Surety,
By GROVER C. BULLINGTON,
Attorney, Sureties.

The foregoing bond and the surety thereon is approved by me this the 1st day of July, A. D. 1936.

IRVIN J. VOGEL,
Judge, 78th District Court, sitting as Judge of the 30th District Court, Wichita County, Texas.

Indorsed: Number 24549-A, The City National Bank of Wichita Falls, Texas, vs. Wichita Royalty Company, et al. Bond for Removal. Filed July 1, 1936, at 10:00 A. M. R. L. Sanderford, District Clerk, Wichita County, Texas, by Edna Berner, Deputy.

PETITION FOR REMOVAL BY ROBERT W. PECKHAM.

96 Filed July 11, 1936.

(Title Omitted.)

To the Honorable Judge of said Court:

Now comes Robert W. Peckham, one of the defendants in the above entitled and numbered cause, and files this his petition for removal of said cause from the District Court of Wichita County, Texas, for the 30th Judicial District, wherein said cause is now pending, to the District Court of the United States for the Northern District of Texas, at Wichita Falls, and for grounds for said removal says:

I.

That the matter in dispute herein between your petitioner and the cross-complainants, Wichita Royalty Company, a joint stock association, and E. E. Scannell, its Trustee, exceeds the sum of $3,000, exclusive of interest and costs.

II.

That said suit is of a civil nature, in equity, and arises under the Constitution and laws of the United States, in that the same involves a Federal question and questions, as follows:

That the suit is brought against an alleged insolvent national banking association, The City National Bank of Wichita Falls, Texas, and E. A. Deaton, its Liquidating Agent, for the purpose of winding up the affairs of such bank and equitably distributing its assets among all of the creditors of said bank, and to declare as void certain alleged preferential transfers made to the directors and to the City National Bank in Wichita Falls, and
97 that said suit is brought under and by virtue of Section 91, Title 12, of the United States Code Annotated, of the laws of the United States of America, to declare void and to set aside certain alleged preferential transfers made by an alleged insolvent national banking association now in liquidation, the Liquidating Agent being a party to said suit.

That it is to declare a trust fund upon certain assets assigned by said bank while it was allegedly insolvent, reference being made to the third amended original answer, cross-action, and interpleader filed herein by the Wichita Royalty Company, a joint stock association, and E. E. Scanneli on June 18, 1936, and made a part hereof for all purposes, to show more particularly and accurately the nature of said cross-action and interpleader and which cross-action and interpleader so referred to and made a part hereof affirmatively shows that said suit is of a civil nature in equity, arising under the Constitution and laws of the United States.

III.

That The City National Bank of Wichita Falls, Texas, and other defendants have filed a petition for removal in said cause to the District Court of the United States for

the Northern District of Texas, at Wichita Falls, and this defendant adopts the allegations in said petition for removal as his own, reference being made to said petition for the grounds therein stated.

IV.

Your petitioner offers herewith a good and sufficient surety for his entering into the District Court of the United States for the Northern District of Texas, Wichita Falls Division, within thirty days from the filing
98 of this petition a copy of the Record of this suit, and for paying all costs that may be awarded by the District Court of the United States if said Court shall hold that this suit was wrongfully or improperly removed thereto.

Wherefore, your petitioner prays that said surety and bond be accepted; that the suit be removed to the District Court of the United States for the Northern District of Texas, at Wichita Falls, pursuant to the statutes of the United States in such case made and provided, and that no further proceedings may be had herein in this Court.

ROBERT W. PECKHAM.

The State of Texas,
County of Travis.

Robert W. Peckham, one of the petitioning defendants in the above cause, being duly sworn, deposes and says that he is one of the defendants in the above cause and has read the foregoing petition and knows its contents, and that the matters and things set forth in the foregoing petition are true and correct.

ROBERT W. PECKHAM.

Sworn to and subscribed before me, this 7th day of July, A. D. 1936.

JEWELL GANNAWAY,
(Seal) Notary Public, Travis County, Texas.

Indorsed: Number 24549-A, The City National Bank of Wichita Falls, Texas, vs. Wichita Royalty Company, et al. Petition for Removal. Filed July 11, 1936, R. L. Sanderford, District Clerk, Wichita County, Texas, by Edna Berner, Deputy.

NOTICE OF INTENTION TO REMOVE OF ROBT. W. PECKHAM, ET AL.

99 Filed July 11, 1936.

(Title Omitted.)

To Wichita Royalty Company, a Joint Stock Association, and E. E. Scannell, Cross-Complainants, and Kilgore & Rogers, their Attorneys:

You and each of you will please take notice that on the 11th day of July, A. D. 1936, at 10:00 o'clock A. M., Robert W. Peckham and Mrs. Hazel D. Peckham, surviving wife of G. W. Peckham, deceased, for herself individually and as guardian of the person and estate of William Peckham and George Peckham, minors, defendants in the cross-action and interpleader filed herein by the Wichita Royalty Company, a joint stock association, and E. E. Scannell, trustee, will file in the above-named Court their respective petitions and bonds as required by law for the removal of said cause from the above-entitled Court to the District Court of the United States for the Northern District of Texas, Wichita Falls Division, and also their respective bonds, each in the sum of one thousand dollars ($1,000), given on such removal according to law and the requirements of the statutes in such cases made and provided, and copies of said petitions and bonds are herewith served and delivered, and upon the filing of said petitions and bonds the defendants aforesaid will pre-

sent and call to the attention of said District Court of Wichita County for the 30th Judicial District of Texas said respective petitions and bonds and move the said District Court of Wichita County, Texas, for an order of removal of said cause from said District Court of Wichita County, Texas, to the District Court of
100 the United States for the Northern District of Texas, at Wichita Falls, and the motion and petition for removal is upon the grounds as stated in said petition and upon said petition and bond so filed and presented.

HAZEL D. PECKHAM,
For herself individually and as guardian of the person and estate of George and William Peckham, minors.
ROBERT W. PECKHAM.
By LESLIE HUMPHREY, Attorney.

Receipt is acknowledged of a true copy of this notice, together with a copy of the petition and bond accompanying the same at 8:30 o'clock A. M., on this 11th day of July, A. D. 1936.

KILGORE & ROGERS,
By JOHN E. KILGORE,
Attorneys for Wichita Royalty Company and E. E. Scannell, Trustee.

Indorsed: Number 24549-A, The City National Bank of Wichita Falls, Texas, vs. Wichita Royalty Company. Notice of Removal. Filed July 11, 1936. R. L. Sanderford, District Clerk, Wichita County, Texas, by Edna Berner, Deputy.

BOND FOR REMOVAL BY ROBERT W. PECKHAM.

101 Filed July 11, 1936.

(Title Omitted.)

Know all Men by these Presents: That the undersigned, Robert W. Peckham, as principal, and the other subscribers hereto, as sureties, are held and firmly bound unto the Wichita Royalty Company, a joint stock association operating under a declaration of trust, and E. E. Scannell, Trustee, plaintiffs in the cross-action and interpleader filed against the undersigned principal, in the sum of One Thousand ($1,000) Dollars, for the payment of which well and truly to be made unto the said Wichita Royalty Company, a joint stock association aforesaid, and E. E. Scannell, its Trustee, their successors and assigns, we do jointly and severally bind ourselves, our heirs, legal representatives, and assigns firmly by these presents.

The condition of the above bond is as follows: That whereas, the above bounden, Robert W. Peckham, has filed his petition in the District Court of Wichita County, Texas, for the removal to the District Court of the United States for the Northern District of Texas, at Wichita Falls, of the above cause, wherein the said Wichita Royalty Company, a joint stock association, and E. E. Scannell, its Trustee, are plaintiffs and this petitioner and others are defendants.

Now, Therefore, if the said Robert W. Peckham shall within thirty days from the date of the filing of said petition for removal enter in the said District Court of the United States a certified copy of the record in said cause,
and shall well and truly pay all costs that may
102 be awarded by said District Court of the United States if said Court shall hold that said cause

was wrongfully or improperly removed thereto, then this obligation shall be null and void; otherwise to remain in full force and effect.

Witness my hand, this 7th day of July, A. D. 1936.

ROBERT W. PECKHAM, Principal.

THE FIDELITY & CASUALTY COMPANY OF NEW YORK,

By GROVER C. BULLINGTON,

(Seal) Attorney. Surety.

The above and foregoing bond and the surety thereon is approved by me this the 11th day of July, A. D. 1936.

ALLAN D. MONTGOMERY,

Judge of the 30th District Court,

Wichita County, Texas.

Indorsed: Number 24549-A, The City National Bank of Wichita Falls, Texas, vs. Wichita Royalty Company. Bond for Removal. Filed July 11, 1936, R. L. Sanderford, District Clerk, Wichita County, Texas. By Edna Berner, Deputy.

PETITION FOR REMOVAL OF HAZEL D. PECKHAM, ET AL.

103 Filed July 11, 1936.

(Title Omitted.)

To the Honorable Judge of said Court:

Now comes Hazel D. Peckham, the surviving wife of G. W. Peckham, deceased, for herself individually and as guardian of the person and estate of William Peckham and George Peckham, minors, citizens and residents of the city of Colorado Springs, State of Colorado, and, limiting this appearance herein solely for the purpose of

presenting a petition for removal of said cause from the District Court of Wichita County, Texas, for the 30th Judicial District to the District Court of the United States for the Northern District of Texas, Wichita Falls Division, and for no other purpose, file this their petition for removal of said cause from said District Court of Wichita County, for the 30th Judicial District of Texas, wherein said cause is now pending, to the District Court of the United States for the Northern District of Texas, Wichita Falls Division, to be held in the city of Wichita Falls in said district and state, and respectfully shows the Court as grounds for said removal as follows:

I.

That the petitioner herein is the surviving wife of G. W. Peckham, deceased, and the guardian of the person and estate of William Peckham and George Peckham, both minors, acting under an appointment of the County Court of Wichita County, Texas, and the said petitioner, Hazel D. Peckham, is the mother of said minors and their natural guardian.

104

II.

That the matter in dispute herein between your petitioners and the cross-complainants, Wichita Royalty Company, a joint stock association, and E. E. Scannell, its trustee, exceeds the sum of $3,000, exclusive of interest and costs, and is the sum of $200,000, and that said suit is of a civil nature and in equity, and in said suit there is a controversy which is wholly between citizens of different states, that is to say, the controversy is between the Wichita Royalty Company, a joint stock association, and E. E. Scannell, its trustee, on the one hand, as plaintiffs in said cross-action, who are citizens and residents of the State of Texas, and a controversy between these petitioning defendants, Hazel D. Peckham, for herself in-

dividually and as guardian of the person and estate of William Peckham and George Peckham, all of whom are citizens and residents of a different state from that of the plaintiffs in said cross-action, to-wit, State of Colorado, and the City of Colorado Springs, and that said controversy as between these petitioning defendants and the said plaintiffs in said cross-action, Wichita Royalty Company, a joint stock association, and E. E. Scannell, its trustee, can be fully determined as to them alone and the controversy as to the other defendants is a separable controversy, and which controversy as between these petitioning defendants and the said Wichita Royalty Company, a joint stock association, and E. E. Scannell, is of the following nature, that is, whether these petitioning defendants are liable to said plaintiffs for funds allegedly wrongfully converted by G. W. Peckham during his lifetime belonging to the said Wichita Royalty Company, a joint stock association, during the time and period that he was trustee therein, and whether or not this
105 defendant, Hazel D. Peckham, as his surviving wife, and her minor children, as his surviving sons, are legally liable to account for such alleged sums from funds received by them out of the estate of G. W. Peckham, deceased, and that, as aforesaid, said issue presents a separable controversy from that asserted by the plaintiffs in said cross-action, viz., Wichita Royalty Company, a joint stock association, and E. E. Scannell, its trustee, as to the other defendants in said cross-petition.

III.

That the above entitled action, cross-petition, and interpleader aforesaid is of a civil nature and in equity, and is a suit which arises under the Constitution and laws of the United States and involves a Federal question and questions, as follows:

That it is a suit commenced against a national banking association, namely, The City National Bank of Wichita

Falls, Texas, and E. A. Deaton, its Liquidating Agent, as well as J. T. Harrell, its alleged trustee, and for the winding up of the affairs of such bank and to equitably distribute its assets among all of its creditors, as is apparent from said cross-petition and interpleader filed herein.

That it is a suit to declare void as a preference the transfer of certain assets by the City National Bank of Wichita Falls, Texas, a national banking association, to the City National Bank in Wichita Falls, also a national banking association, and certain directors of said bank, the petition and cross-action alleging the insolvency of the transferror bank.

106 That the rights upon which said suit and action is based are created and determined by the laws of the United States and Section 91, Title 12, United States Code Annotated, is specifically pleaded by the plaintiffs in said cross-action as grounds for declaring void certain allegedly preferential transfers made by The City National Bank of Wichita Falls, Texas, and said suit seeks to set aside such preferential transfers under Section 91, Title 12, aforesaid.

That the suit is against E. A. Deaton, the Liquidating Agent of a national bank created and organized under the laws of the United States, which liquidating agent receives his powers and is subject to the liabilities created by the laws of the United States.

Reference is here made to the third amended original answer, cross-action, and interpleader filed herein by the Wichita Royalty Company, a joint stock association, and E. E. Scannell on June 18, A. D. 1936, and made a part hereof for all purposes, to show more particularly and accurately the nature of said cross-action and interpleader, and which cross-action and interpleader so referred to and made a part hereof affirmatively shows that

this is a suit of a civil nature, in equity, arising under the Constitution and laws of the United States.

IV.

These petitioning defendants adopt the petition filed herein for removal of this cause by The City National Bank of Wichita Falls, Texas, and other defendants, as her own and reference is made to said petition and the grounds thereof for all purposes.

107

V.

Your petitioners offer herewith a good and sufficient surety for their entering into the District Court of the United States for the Northern District of Texas, Wichita Falls Division, within thirty days from the filing of this petition a copy of the Record of this suit, and for paying all costs that may be awarded by the District Court of the United States if said Court shall hold that this suit was wrongfully or improperly removed thereto.

Wherefore, your petitioners pray that said surety and bond be accepted; that the suit be removed to the District Court of the United States for the Northern District of Texas, at Wichita Falls, pursuant to the statutes of the United States in such case made and provided, and that no further proceedings may be had herein in this Court.

HAZEL D. PECKHAM,
MRS. H. P.,
For herself and as guardian for her minor sons, George and William Peckham.

State of Colorado,
County of El Paso.

Hazel D. Peckham, one of the petitioning defendants in the above cause, being duly sworn, deposes and says

that she is one of the defendants in the above cause and has read the foregoing petition and knows its contents, and that the matters and things set forth in the foregoing petition are true and correct, and that she has executed and subscribed to the same for herself and as guardian for her minor sons, George Peckham and William Peckham.

HAZEL D. PECKHAM,
MRS. H. P.,
For herself individually and as Guardian for William and George Peckham, Minors.

Sworn to and subscribed before me, this 8th day of July, A. D. 1936.

HATTIE M. WENZEL,
(Seal) Notary Public, El Paso County, Colorado.

My commission expires January 12, 1936.

108 Indorsed: Number 24549-A, The City National Bank of Wichita Falls, Texas, vs. Wichita Royalty Company, et al. Petition for Removal. Filed July 11, 1936. R. L. Sanderford, District Clerk, Wichita County, Texas, by Edna Berner, Deputy.

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109 BOND FOR REMOVAL BY HAZEL D. PECKHAM, ET AL.

Filed July 11, 1936.

(Title Omitted.)

Know All Men By These Presents: That the undersigned, Hazel D. Peckham, surviving wife of G. W. Peck-

ham, deceased, for herself and as guardian for George Peckham and William Peckham, minor sons of G. W. Peckham, deceased, as principals, and the other subscribers hereto, as sureties, are held and firmly bound unto the Wichita Royalty Company, a joint stock association operating under a declaration of trust, and E. E. Scannell, Trustee, plaintiffs in the cross-action and interpleader filed against the undersigned principal, in the sum of One Thousand ($1,000) Dollars, for the payment of which well and truly to be made unto the said Wichita Royalty Company, a joint stock association aforesaid, and E. E. Scannell, its Trustee, their successors and assigns, we do jointly and severally bind ourselves, our heirs, legal representatives, and assigns firmly by these presents.

The condition of the above bond is as follows: That, whereas, the above bounden, Hazel D. Peckham, for herself and as guardian aforesaid, has filed her petition in the District Court of Wichita County, Texas, for the removal to the District Court of the United States for the Northern District of Texas, at Wichita Falls, of the above cause, wherein the said Wichita Royalty Company, a joint stock association, and E. E. Scannell, its Trustee, are plaintiffs and this petitioner and others are defendants:

110 Now, therefore, if the said Hazel D. Peckham, for herself individually and as guardian for said minors, George Peckham and William Peckham, shall within thirty days from the date of the filing of said petition for removal enter in the said District Court of the United States a certified copy of the record in said cause, and shall well and truly pay all costs that may be awarded by said District Court of the United States if said Court shall hold that said cause was wrongfully or improperly removed thereto, then this obligation shall be null and void; otherwise to remain in full force and effect.

Witness My Hand, this 7th day of July, A 36.

HAZEL D. PECKHAM and MRS. H. P.,
For herself individually and as Guardian for George and William Peckham, Minors,
Principal.

(Seal) THE FIDELITY & CASUALTY COMPANY OF NEW YORK,
By GROVER C. BULLINGTON,
Attorney; Surety.

The above and foregoing bond and the surety thereon is approved by me this the 11 day of July, A. D. 1936.

ALLAN D. MONTGOMERY,
Judge of the 30th District Court,
Wichita County, Texas.

Indorsed: Number 24549-A, The City National Bank of Wichita Falls, Texas, vs. Wichita Royalty Company, et al. Bond for Removal. Filed: July 11, 1936. R. L. Sanderford, District Clerk, Wichita County, Texas, by Edna Berner, Deputy.

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111 ORIGINAL PLEA TO FEDERAL JURISDICTION AND MOTION TO REMAND.

Filed November 16, 1936.

In the District Court of the United States for the Northern District of Texas, Wichita Falls Division.

City National Bank, et al.,
vs. No. 538 Eq.
Wichita Royalty Company.

Appearing only for the purpose of pleading to the jurisdiction of this Court, for motion to remand, and for such

other purposes as hereinafter shown, but only for such purposes, come now Wichita Royalty Company and E. E. Scannell, its trustee, herein called Cross-complainants, and would respectfully show:

1. That this suit was instituted in the District Court of Wichita County, Texas, with cross-action filed and other parties therein impleaded in 1931. As affirmatively appears upon the face of the record, the suit at the time of its removal had joined at issue many separate causes of action, a proceeding permissible under the blended system of Texas practice in the absence of pleas in abatement, some of which separate causes of action are as follows:

a. Plaintiff sues Cross-complainants upon a promissory note;

b. Plaintiff bank sues Chas. L. Black, E. E. Scannell, Guy Rogers and Wichita Royalty Company to invalidate liens given to secure Chas. L. Black and Guy Rogers in the payment of money by Wichita Royalty Company, and for an accounting, a controversy first filed and still pending in another Court, with cross-action filed and affirmative relief sought therein and with a motion to strike herefrom plaintiffs' suits thereon as in abatement;

112 c. Plaintiff bank and Cross-complainants sue The Texas Comany for the proceeds of minerals run to the credit of Wichita Royalty Company;

d. Plaintiff bank and Cross-complainants sue the Humble Oil & Refining Company for the proceeds of minerals run to the Credit of Wichita Royalty Company;

e. Plaintiff bank and Cross-complainants sue the Continental Oil Company for the proceeds of minerals run to the Credit of Wichita Royalty Company;

f. Plaintiff bank sues for the title and possession of real property, record title to which stands in the name of Wichita Royalty Company as to a part, and in the name of G. W. Peckham as to the remainder;

g. Cross-complainants sue City National Bank of Wichita Falls, herein called the old bank, for its deposit balance;

h. Cross-complainants sue said old bank for wrongful participation with G. W. Peckham in his breaches of trust;

i. Cross-complainants sue said old bank for being unjustly enriched to the extent that trust funds were received by it to apply upon the personal debt of Peckham and others;

j. Cross-complainants sue J. T. Harrell for wrongful participation with G. W. Peckham in breaches of trust;

k. Cross-complainants sue J. T. Harrell for being unjustly enriched to the extent that trust funds were paid to him or in discharge of his debt;

l. Cross-complainants sue the administrator and heirs of G. W. Peckham for an accounting as to transactions had by G. W. Peckham in his lifetime;

m. Cross-complainants sue the administrator and heirs of G. W. Peckham for title to and possession of certain mineral estates;
113

n. Cross-complainants sue to avoid the transactions had by G. W. Peckham in his dual capacity as an individual and as trustee;

o. Cross-complainants sue The City National Bank in Wichita Falls, herein called the new bank, to set aside

the transfer and mortgage of assets by the insolvent old bank to the new incorporating bank;

p. Cross-complainants sue the new bank upon its assumption of the debts of the old bank;

q. Cross-complainants sue the individual directors of both the old and the new banks for their receiving preferences as creditors of the insolvent old bank whose affairs they managed and much of whose assets were used for their benefit when such bank so directed by them was both insolvent and in contemplation of insolvency.

2. Thus it appears upon the record and as a fact that there are many separate and distinct causes of action by and between separate and distinct groups of parties, some being actions at law, with others seeking equity relief, without this Court's potential jurisdiction to hear and determine many, if not all of such causes of action.

3. That the controversy herein between the old bank and Wichita Royalty Company, as well as the controversy between Wichita Royalty Company and J. T. Harrell as to transactions subsequent to October 1, 1925, were pleaded to and tried in the State District Court in 1932, with judgment rendered and appeal taken and the cause remanded by the Supreme Court of Texas with instruction to proceed to judgment in accordance with the opinion filed, with respect to which matters and such causes of action herein asserted by Wichita Royalty Company against the old bank and against J. T. Harrell, the petition for removal was not filed in the time and
114 manner required by law and as to which any existing right said parties may have had to remove the cause was lost by proceedings had in the State Court both with respect to the cause of action asserted by the old bank against Wichita Royalty Company and the cross-action asserted by Wichita Royalty Company against the old bank, as well as that asserted against J. T.

Harrell by Wichita Royalty Company. Said old bank and J. T. Harrell having invoked the jurisdiction of the State Court to hear and determine the matters thus raised at issue and the law of the case having been fixed and determined, are estopped and cut off from any right to remove after an adverse decision by the highest State Court to which the cause could be appealed.

4. That neither the cause of action asserted by the old bank against Cross-complainants, nor the cause of action asserted by Cross-complainants against the old bank, nor that asserted by Cross-complainants against J. T. Harrell, nor that asserted by Cross-complainants against the new bank, nor that asserted against the individual directors of the old bank, nor that asserted by either party hereto against all or either of the other parties, really and substantially involved a controversy or dispute properly within the jurisdiction of the National Court; and for want of jurisdiction the Court should, sui sponti, remand the cause and each cause of action asserted therein to the State Court whence it was remanded.

5. That there is no dispute and no controversy as to the construction of the National Constitution, the acts of Congress, or treaties, and no federal question is otherwise involved. The dispute is as to facts and not as to construction of a federal law. While Section 91, Title 12, United States Code Annotated, is referred to in Cross-complainants pleading, yet there is and can be no dispute as to the meaning of said provision, it being susceptible of but one construction and that having been given by the Supreme Court of the United States. There being no dispute as to the construction of any federal law and the dispute being limited to one of fact, there is no such federal question as to give this Court jurisdiction or to support the petitions for removal.

115

6. While the old bank and its liquidating agent are such, yet the suit against the old bank, though insolvent,

is not removable as such; and since no receiver or other officer of the United States is in charge of the old bank and no suit is brought against any such officer but only against the bank and an agent of its own voluntary selection, such cause of action is not removable.

7. The old bank's asserted causes of action against the several parties hereto are not removable, in that under the removal statutes only a defendant and not a plaintiff may remove.

8. The removal petition of the old bank does not purport to seek removal of its causes of action herein asserted against the several parties, simply seeking the removal of that raised by cross-complainants in their amended pleading. This Court's jurisdiction has never attached to the plaintiffs causes of action, which should be noted of record so that the parties may proceed to judgment in the State Court without record question as to jurisdiction but in respect of adjudicated jurisdiction.

9. The respective pleading of the several parties are referred to and made a part hereof as though copied herein.

10. Though Cross-complainants' suit be construed to be one to wind up the affairs of a national bank and therefore finding jurisdictional support had same been originally filed herein, yet such cause of action as such is not one arising under the Constitution, laws or treaties of the United States, as defined by the removal statute, but rather is an "other suit" of which the Court has potential jurisdiction as an original suit but which, when filed in the State Court, can be remanded "by the de-
116 fendant or defendants therein, being non-residents of that state." Even then, should it be determined to be a suit to wind up the bank, there is a want of diversity of citizenship to exclude it from those cases removable under the statute. Section 24 of the Judicial

Code gives the District Court original jurisdiction of specified causes of action. One of these is an action to wind up the affairs of a national bank. Such an action, however, is not one involving a federal question under the removal statute. It is one of those other actions which may be removed by a citizen of another state and by no one else.

11. That neither The Texas Company nor the Continental Oil Company nor the Humble Oil & Refining Company, nor William Peckham and/or George Peckham, minors, through their guardian with authority and under the direction of the Probate Court, has filed a petition and bound for removal, nor has any defendant sued by the old bank filed a petition for removal of plaintiffs' cause of action and the time has long since expired in which either party may file his petition and bond for such removal, said defendants so sued by the old bank being Chas. L. Black, Guy Rogers individually and as trustee, E. E. Scannell individually and as trustee, Wichita Royalty Company and W. H. Peckham, administrator of the Estate of G. W. Peckham, deceased, together with the oil companies above named, said individuals each being a resident of the State of Texas, and said corporate defendants being Texas corporations.

12. That Cross-complainants' suit against the administrators and heirs of G. W. Peckham, deceased, does not involve a controversy separable as between them, the same being joint and each being a necessary party to the relief sought. W. H. Peckham, said administrator, being a resident citizen of Texas, and Robert Peckham being a citizen of Texas when the cause of action was filed against him and Hazel D. Peckham, and each being a necessary party hereto, said cause of action is not removable upon the petition of Hazel D. Peckham, a non-resident of the State, and who is not shown to have complied and in fact has not complied with the requirements of Chapter 13, Title 69, Revised Civil

117

Statutes of Texas, and had no authority as guardian to petition for removal, no permissive order having been entered by any Probate Court.

13. That W. H. Peckham, as administrator of the Estate of G. W. Peckham, deceased, did not petition for the removable of said cause under the direction and with the authority of the Probate Court of Wichita County, Texas, wherein he was appointed by the administrator, and which Court alone had the authority to authorize the filing of the petition for removal.

14. That Texas Investment Company is a dissolved corporation capable of being sued as such but without power to petition for removal except upon the joinder in the petition by each member of the last Board of Directors of such corporation as trustee for the creditors and stockholders thereof, and no such member of said Board of Directors has petitioned for the removal of said cause as to said dissolved corporation and the time has expired in which such a petition and bond could be filed.

15. That the several causes of action herein asserted by the old bank are each wanting in equity, and for the lack thereof should be dismissed, for which prayer is made.

Wherefore, the following alternative prayers are made, each subject and without prejudice to the prayer or prayers that precede it in the order designated as follows:

1. That this case in its entirety be remanded to the 30th District Court of Wichita County, Texas, whence it was removed;

2. That each and every separate cause of action herein asserted by either party hereto be remanded to said 30th

District Court of Wichita County, Texas, prayer being made for remand of all causes of action severally;

118 3. That as to each cause of action, if any, of which this Court retains jurisdiction, the Court determine and declare the nature thereof, whether cognizable at law or in equity, retaining such, if any, causes of action properly removed and that is equitable in nature upon the equity docket, and transferring to the law docket such causes of action, if any, properly removed to this Court that are actions at law.

4. That the Court enter such other and further orders as in law and equity will redound to an effective adjudication of the several matters raised by the pleading herein, including the granting of permission and the entry of an order requiring the re-casting of pleadings by the several parties.

Respectfully submitted,
GUY ROGERS,
Attorney for Wichita Royalty Company and E. E. Scannell.

The State of Texas,
County of Wichita.

E. E: Scannell, being duly sworn, on oath says that he has read the above plea and motion and the facts therein stated are true.

E. E. SCANNELL.

Sworn to and subscribed before me this 16th day of November, A. D. 1936.

GRACE JARNAGAN,
(Seal) Notary Public, Wichita County, Texas.

119 ORDER OVERRULING PLEA TO JURISDICTION AND MOTION TO REMAND.

Filed and Entered December 3, A. D. 1936.

(Title Omitted.)

This day came on to be heard the motion filed herein by the cross-complainants, Wichita Royalty Company and E. E. Scannell, its Trustee, to remand this cause to the District Court of Wichita County for the 30th Judicial District of Texas, and the cross-complainants, Wichita Royalty Company and E. E. Scannell, its Trustee, appeared by Guy Rogers, their attorney, and also came the interpleaded defendants, City National Bank of Wichita Falls, Texas, a corporation; City National Bank in Wichita Falls, Texas, a corporation; J. T. Harrell, individually and as Trustee of the City National Bank of Wichita Falls, Texas; Texas Investment Company, a corporation; E. A. Deaton, Liquidating Agent of the City National Bank of Wichita Falls, Texas; L. H. Cullum, Leslie Humphrey, Tarlton Morrow, Jack Jeffus, Oral Jones, Frank Kell, Joe Kell, J. J. Perkins, C. W. Snider, and F. P. Timberlake, interpleaded defendants in the cross-action of the
120 Wichita Royalty Company and E. E. Scannell, its Trustee, by and through their respective attorneys, T. R. Boone, Tarlton Morrow, and Leslie Humphrey, and also came W. H. Peckham, Administrator of the Estate of G. W. Peckham, Deceased, Mrs. Hazel D. Peckham, for herself and as Guardian of William Peckham and George Peckham, minors, and Robert W. Peckham, through their attorney, Arch Dawson, and said motion to remand being argued and submitted to the Court, and the Court, having duly considered the same and being fully advised in the premises, does now order that said motion be and it is hereby overruled.

The cross-complainants, Wichita Royalty Company and E. E. Scannell, its Trustee, excepted to said order over-

ruling said motion to remand, which exception is allowed and entered.

It is Further Ordered that the Wichita Royalty Company and E. E. Scannell, its Trustee, are granted ten (10) days from the date hereof in which to recast their pleadings and they shall file within said time such pleadings, as recasted; that the other parties hereto, plaintiff and interpleaded defendants, are granted ten (10) days thereafter in which to plead, answer, and reply to the pleadings as recasted by the cross-complainants, Wichita Royalty Company and E. E. Scannell, its Trustee.

It is Further Ordered and Decreed by the Court that the interpleaded defendants, The Texas Company, Humble Oil & Refining Company, and Continental Oil Company, may have thirty (30) days from and after the filing of the recasted pleadings by the Wichita Royalty Company and E. E. Scannell, its Trustee, within which to make answer thereto, and it is so decreed.

WM. H. ATWELL,
United States District Judge.

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121 CITY NATIONAL BANK'S REPLEADED BILL OF COMPLAINT.

Filed in U. S. District Court, December 21, 1936.

(Title Omitted.)

To the Honorable William H. Atwell, Judge of Said Court:

The City National Bank of Wichita Falls, Texas, a national banking association duly incorporated, but now in liquidation, and E. A. Deaton, Liquidating Agent of said bank, hereinafter styled Complainants, and pursuant to an order granting them the right to replead, file this their

bill of complaint, repleading their cause of action set forth in their second amended original petition, complaining of the Wichita Royalty Company, a common-law trust, whose sole trustee is E. E. Scannell, E. E. Scannell, individually, and also complaining of Guy Rogers, individually and as trustee under the will of L. B. Rogers, deceased, Charles L. Black, W. H. Peckham, administrator of the estate of G. W. Peckham, deceased, Humble Oil & Refining Company, a corporation, Continental Oil Company, a corporation, and The Texas Company, a corporation, all hereinafter styled respondents, and with
*122 respect show to the Court:

I.

That the complainant City National Bank of Wichita Falls, Texas, is a national banking association in liquidation; that it is a citizen and resident of Wichita County, and State of Texas; that E. A. Deaton is its Liquidating Agent, duly appointed as such, and likewise a citizen and resident of Wichita County, Texas; that the Wichita Royalty Company, respondent herein, is a common-law trust, acting pursuant to a declaration of trust filed for record in Wichita County, Texas, whose sole trustee is E. E. Scannell, a resident and citizen of Wichita County, Texas; that E. E. Scannell, individually, likewise is a resident and citizen of Wichita County, Texas; that Guy Rogers is a citizen and resident of Wichita County, Texas, and is trustee under the will of L. B. Rogers, deceased; that Charles L. Black is a citizen and resident of Travis County, Texas; that W. H. Peckham is the administrator of the estate of G. W. Peckham, deceased, appointed as such by the Probate Court of Wichita County, Texas, and is a citizen and resident of Wichita County, Texas; that the Humble Oil & Refining Company, the Continental Oil Company, and The Texas Company are each corporations duly incorporated and are oil purchasing companies, all residing and having a place of business in the

County of Wichita, and State of Texas, and each being incorporated under the laws of the State of Delaware and therefore citizens of such state, but each being licensed and permitted to transact business in the State of Texas.

II.

That this Honorable Court has jurisdiction to hear and determine this controversy, in that the complainant City National Bank of Wichita Falls, Texas, is a national banking association, now in liquidation pursuant to
123 the statutes of the United States of America and the resolution of the stockholders and directors made in accordance therewith; that E. A. Deaton is the Liquidating Agent of said bank, duly appointed in accordance with and pursuant to the statutes of the United States of America and resolutions of the directors and stockholders of said bank legally made appointing the said E. A. Deaton as such Liquidating Agent, and this a suit for winding up the affairs of the City National Bank of Wichita Falls, Texas.

That this suit also is a suit of a civil nature in equity arising under the Constitution and laws of the United States, of which the District Courts of the United States are given original jurisdiction in this to-wit: That it is a suit bottomed upon and which involves the construction of Section 91, Title 12, of the United States Code Annotated, with reference to the validity of a transfer of notes, bonds, bills of exchange, and other evidences of debt owing to the complainant herein, City National Bank of Wichita Falls, and of deposits to its credit and all assignments of mortgages and sureties on real estate and deposits of money heretofore made by the complainant City National Bank of Wichita Falls, Texas, to the interpleaded defendant City National Bank in Wichita Falls, made such in the cross-action of the Wichita Royalty Company against the City National Bank in Wichita Falls,

pursuant to a contract and assignment dated the 15th day of March, A. D. 1933, executed by the City National Bank of Wichita Falls, complainant herein, and the City National Bank in Wichita Falls, interpleaded defendant in the cross-action of the cross-complainant, Wichita Royalty Company, such jurisdiction more fully appearing from the facts hereinafter pleaded.

124 III.

Complainants say that the Wichita Royalty Company is a form of an association commonly known as a Massachusetts or common-law trust; that the sole management and control of the same is vested under the articles of association and declaration of trust in one trustee, who at present is E. E. Scannell and who has since his appointment, to-wit, on the 12th day of November, A. D. 1929, been handling exclusively as such trustee the affairs of the said respondent.

Complainants are informed that there are certain certificate holders, but allege that none of them reside in the State of Texas where process can reach them, and that no judgment can be enforced against the certificate holders for the collection of any indebtedness due the complainants.

IV.

That on the 26th day of June, A. D. 1930, the respondent Wichita Royalty Company, through E. E. Scannell, its trustee, and for a valuable consideration, made, executed, and delivered to the complainant City National Bank of Wichita Falls a certain promissory note of the Wichita Royalty Company in the principal sum of $22,000, which note was due sixty days after date and payable to the order of the complainant bank, with interest thereon from date until paid at the rate of 8% per annum, which note

provides also for 10% additional upon the principal and interest as attorney's fees if sued upon or placed in the hands of an attorney for collection; that this note is in extension and renewal of an obligation theretofore owing by the respondent Wichita Royalty Company to the complainant bank for money borrowed at the time G. W. Peckham was sole trustee of said company and at a time when E. E. Scannell was the secretary and treasurer, and complainants herein allege and say that said note has never been paid and that it is a valid debt and obligation of the Wichita Royalty Company and its trustee to the complainant herein, and that said note, together
125 with interest and attorney's fees accruing thereon, aggregates at this time the sum of $40,000.

That, in addition to the above indebtedness, complainants allege that the respondent Wichita Royalty Company is further indebted to the complainant bank and its Liquidating Agent upon the unpaid balance of a promissory note dated June 9, 1930, executed by the Texas Investment Company, a corporation, and payable to the order of the complainant, which note was originally for the principal sum of $43,000 and was due on demand, and bearing interest at the rate of 8% per annum and for attorney's fees, and which note was duly and legally indorsed by the Wichita Royalty Company, by E. E. Scannell, trustee, and also by J. T. Harrell and J. A. Kemp; that said note at the time of its execution was secured with a pledge of certain collateral securities, which, pursuant to the terms of said note, were sold on December 29, 1930, leaving a deficiency or balance of $29,192, including interest and attorney's fees, and that the relative liability of the indorsers on said note for such deficiency was one-half to the Wichita Royalty Company and one-half to J. T. Harrell and J. A. Kemp, jointly, and that the respondent Wichita Royalty Company and E. E. Scannell, its trustee, is therefore indebted to the plaintiff for one-half of such deficiency, or the sum of $14,596, and interest thereon at 8% from December 29, 1930.

That both of said notes, as hereinabove alleged, are unpaid and due demand has been made upon the respondent Wichita Royalty Company for the payment of same, and such demand has been refused and complainants sue for the aggregate amount of the principal, interest, and attorney's fees due on said notes, aggregating $60,000.

126 V.

Complainants say that the Wichita Royalty Company, respondent herein, does not have sufficient assets and has not had sufficient assets since the maturity of said notes with which to pay the same in full, but that it does have substantial assets sufficient to pay substantially said notes; that, inasmuch as none of the shareholders are subject to the process of this Court, that is, being nonresidents of Texas (unless it be Scannell), the complainants must look alone to the properties of said trust for the satisfaction of the debts owing to it by the said Wichita Royalty Company.

VI.

The declaration of trust, which is duly recorded in Volume ...., Page ...., of the Deed Records of Wichita County, Texas, to which reference is here made, creates a trust for the benefit of the creditors of the Wichita Royalty Company upon the assets of same and which provides as follows:

(A) That the trustee (who is E. E. Scannell) shall hold all of the funds and properties in trust for the purposes and with the powers and limitations set out in the declaration of trust;

(B) It provides for the management of the affairs of said association or trust by one trustee, giving him exclusive power and authority in such management, and provides that all title acquired shall be held in trust by such trustee in his capacity as such;

(C) That any debt incurred by the trustee shall be a charge on the property of the trust in preference to the claim, or claims, of any stockholder as such and that all of the funds and properties of the trust of every character shall stand primarily charged with the burden of paying any claim or money demand established or existing on account of the operations and business of said trust, whether founded on contract or tort, to the end that the stockholders may be protected from personal liability on account thereof;

(D) That said articles of association contained other provisions. It provided for a capital stock of one million dollars; that certificates of beneficial ownership should be issued to shareholders and that the assets of said association should be impressed with a trust and lien for the payment of all the obligations of said trust estate.
127 It contained other provisions, the effect of which was to create for the benefit of the creditors of said association ratably and alike, especially in case of insolvency, a trust fund upon all of the assets of said association and it was therefore the duty of the trustee administering said assets to treat the same as a trust fund for the benefit of all the creditors of said association ratably and alike, and to suffer no preferential transfers or payments, a violation of which duty would be an act of bad faith on the part of the trustee.

That the indebtedness herein sued for is an indebtedness incurred by the trustee in the management and conduct of the business of said trust and pursuant to the terms of the articles of association aforesaid.

VII.

These complainants further allege that since the filing of this suit the trustee, E. E. Scannell, has diverted the properties and the proceeds therefrom in an effort to defeat an ultimate liability upon this indebtedness and for

purposes not authorized by the trust; that the properties owned by the respondent Wichita Royalty Company are producing oil royalties in the main and that the income and receipts therefrom should have been applied to the payment of this indebtedness, or at least kept subject to the payment thereof in the event it should be finally determined that said respondent is so indebted to the complainants, but the complainants say that said trustee, E. E. Scannell, has so used said funds and the income therefrom as to hinder, delay, and defraud the complainants, in that the assets and monies realized from the same by the respondent Wichita Royalty Company will not be forthcoming or available for the satisfaction of complainants' indebtedness herein should it be finally determined that the respondent Wichita Royalty Company is so indebted.

128 VIII.

That at the time of the execution of said notes and the filing of the suit thereon, the Wichita Royalty Company owned valuable royalties, some of which were located and situated in the State of Oklahoma and are described as follows:

In Okmulgee County.

1st—An undivided 1/8th overriding royalty interest in the oil, gas, and minerals on the South 1/2 of the S. W. 1/4 of Sec. 34, Township 12 North, Range 12 East, known as the Ellis Holmes Farm in said county, fully described in an instrument dated November 18, 1922, executed by B. L. Fain in favor of First Party herein, which instrument was filed for record Sept. 18, 1924, at one o'clock p. m. and recorded in the Misc. Records at pages 404-5 of Vol. 2 of the Records of said Okmulgee County, reference to which is made for all purposes.

2nd.—An undivided ¼ of the ⅛th royalty on the South ½ of the Southwest ¼th of Sec. 34, Township 12 N., Range 12 E., known as the Ellis Holmes Farm, said interest being fully described in an instrument executed by W. H. Peckham in favor of First Party herein on the 4th day of April, 1923, recorded in Book M 259, Page 261, of the Records of said Okmulgee County, reference to which is made for all purposes.

3rd—19/40ths of the ⅛ royalty on the North ½ of the S. W. ¼ of Sec. 34, Township 12 North, Range 12 E.; known as the Ellis Holmes Farm in said county, said interest being fully described in an instrument dated August 1, 1923, executed by W. H. Peckham in favor of First Party herein, which instrument is duly recorded in Book M 259 at Page 262 of the Records of said County, reference to which is made for all purposes.

In Noble County.

4th—5/32nds of the ⅛th royalty on the N. W. ¼ of the S. E. ¼th of Sec. 10, Township 24 North, Range 1, West in said county, said interest being fully described in Vol. M-20, at page 466, and in Vol. 20 at 344 and Vol. M-20 at 462 of the Records of said Noble County, reference to which is made for all purposes.

5th. 2/7ths of the ⅛th fee royalty on the N. W. ¼th of Sec. 15, Township 24 N., Range 1 W., known as the J. W. See farm in said County, said interest being fully described in instruments recorded in Vol. M-20 at page 349 and in Vol. M-20 at page 464 of the Records of said County respectively, reference to which is made for all purposes.

6th—1/256th of the ⅛ fee royalty on lots 1 and 2 and the south ½ of the northeast ¼ Sec. 3, Township 24 N. Range 1 W. known as the J. Carmichael Farm
129 in said county, which interest is fully described in an instrument recorded in Vol. M-24 at page 10

of the Records of said county, reference to which is made for all purposes.

In Kay County.

7th—1/320th of the 1/8th fee royalty on the N. W. 1/4 of Sec. 34, Township 25 N. Range 1 W. in said county known as the Fred A. Beverlin Farm, said interest being fully described in instruments recorded in Vol. 97 at page 257 of the Records of said County, reference to which is made for all purposes.

8th—3/640ths of the 1/8th fee royalty on the east 1/2 of the Northeast 1/4 Sec. 34, Township 25 N. Range 1 W., known as the W. F. McDaniel farm in said county, which interest is fully described in an instrument recorded in Vol. 97 at page 257 of the Records of said county, reference to which is made for all purposes.

9th—1/64th of the 1/8th fee royalty on the west 1/2 of the N. E. 1/4 of Sec. 34, Township 25 N., Range 1 W., known as the C. W. Goltry farm in said county, which interest is fully described in instruments recorded in Vol. 97 at page 257 of the records of said county, reference to which is made for all purposes.

together with all the improvements thereon and appurtenances thereto belonging.

That said royalties were and are of the reasonable value of at least $5,000; that, in addition to receiving the income and revenues therefrom, the said E. E. Scannell, acting together with the respondent Guy Rogers, have mortgaged said Oklahoma royalties to Guy Rogers and have transferred the income therefrom to the said Guy Rogers, as shown by a transfer and mortgage marked Exhibit "A" and made a part of this petition.

That the respondent Wichita Royalty Company also owned other valuable royalties located in the State of Texas, an itemized list and description thereof being attached hereto, marked Exhibit "B," and made a part hereof.

IX.

That after the execution of the mortgage upon the Oklahoma properties, the respondent Wichita Royalty Company, acting through E. E. Scannell and pursu-
130 ant to a plan to defeat the ultimate payment of this liability, executed a deed of trust upon all of the remainder of the royalties and assets owned by the Wichita Royalty Company, situated in the Counties of Archer, Young, Gray, and Wheeler, State of Texas, which properties were substantially the major portion in value of all the remaining assets of the Wichita Royalty Company, and at the same time the said Wichita Royalty Company delivered to its attorney, Guy Rogers, a transfer and assignment of all the oil and gas and proceeds thereof produced from said properties; that the mortgage upon the Oklahoma properties and the deed of trust and oil assignment upon the properties in Texas purported to secure Guy Rogers in certain monies advanced and Charles L. Black in the payment of an attorney's fee for services on appeal in the case of City National Bank v. Wichita Royalty Company in the sum of $5,000; that the indebtedness secured by the assignment and mortgage upon the Oklahoma properties, shown in Exhibit "A," was to secure the sum of $2,500 and such other advancements as he might make, and in this connection the complainants say that the sums secured by the mortgages and deeds of trust aforesaid were greatly less than the actual value of the properties pledged and transferred.

X.

That subsequent to the execution of said deed of trust on the Texas properties and on the 7th day of August, 1934, the trustee appointed in said deed of trust, acting

pursuant to instructions from Guy Rogers, attorney, purported to sell all of the above described royalties in Wheeler, Gray, Archer, and Young Counties, Texas, at the Courthouse door of Archer County, Texas, and at said sale the properties were struck off to Guy Rogers, who purported to act and bid therefor as a trustee under
131 the will of L. B. Rogers, his deceased father, for the price and sum of $250, and a deed was thereupon made by Ray Bland, as trustee, to Guy Rogers, Trustee under the will of L. B. Rogers, deceased, of all the royalties situated in Gray, Wheeler, Young. and Archer Counties, Texas, for a purported consideration of $250, which sum is wholly and grossly inadequate and much less than the value of the royalties purchased, and in this connection the complainants say that the reasonable and fair market value of said royalties at said time was at least the sum of $20,000, a sufficient value to pay not only the debts secured in the deed of trust to Charles L. Black and Guy Rogers, but a substantial overplus to apply upon the indebtedness due this complainant. A copy of the trustee's deed is attached to this petition, marked Exhibit "C," and made a part hereof.

XI.

These complainants say that the sale and foreclosure was made for the purpose of placing said property beyond the reach of this creditor and to prevent these complainants from collecting any portion of the indebtedness due them, in the event it was finally determined that the obligation sued upon is a valid obligation of the Wichita Royalty Company, and that said sale was for a grossly inadequate price, made to a party who occupied a confidential relationship to the complainant, as well as to the Wichita Royalty Company, and that said sale amounts to at least a constructive, if not an actual fraud upon the rights of these complainants and should be vacated and set aside.

XII.

Complainants say that at the time of the execution of the mortgage upon the Oklahoma properties and the execution of the deed of trust and oil assignments upon the remaining Texas properties, and at the time
132 of the sale under the deed of trust by Ray Bland as trustee, and at the time of the purchase of said properties by Guy Rogers as trustee under the will of L. B. Rogers, deceased that the assets of the Wichita Royalty Company were wholly inadequate to pay all of its indebtedness, including the indebtedness due the complainants herein, but that said Royalty Company owned substantial assets and these complainants were entitled to a ratable payment of their indebtedness along with that of all other creditors, and that the said Wichita Royalty Company was therefore at the times above mentioned insolvent and upon its insolvency its assets became a trust fund charged with the ratable payment of all of its debts, and the trustee was without power to prefer one creditor over another, or to execute a mortgage or deed of trust upon its properties, which had that effect, but was in duty bound in equity to hold said properties for the ratable payment of all of the creditors of said company and to fairly apply the proceeds and revenues therefrom for said purpose, and that the execution of the mortgages and especially the sale by the trustee of the properties violated this equitable principle, and, if sustained, would preclude the complainants from a ratable and equitable distribution of the assets of the Wichita Royalty Company for the payment of their debts and wholly deprive these complainants of the payment of their indebtedness, should the complainants be successful in establishing their debt as a valid obligation against the Wichita Royalty Company.

Therefore, Guy Rogers, as trustee under the will of L. B. Rogers, deceased, is made a party hereto for the purpose of vacating said sale, and Guy Rogers, individually,

and Charles L. Black are made parties hereto for the purpose of inquiring into the validity of the respec-
133 tive mortgages and deeds of trust held by them and the amount of the indebtedness due said respective attorneys and secured under said mortgages and deeds of trust.

XIII.

That in the latter part of 1926, while George Peckham was trustee of the Wichita Royalty Company, he acquired certain royalty interests in Wheeler and Gray Counties, State of Texas, for the benefit and use of the Wichita Royalty Company and made a conveyance to said Royalty Company of such interests, except said conveyances are somewhat indefinite and ambiguous and there appears to stand in the name of G. W. Peckham, individually, outstanding royalty interests in said counties which complainants allege was intended to have been conveyed to the Wichita Royalty Company, which royalty interests outstanding in the name of G. W. Peckham and which apparently did not pass by the deeds executed by G. W. Peckham to the Wichita Royalty Company are as follows:

An undivided 15/32nds interest in the oil, gas, and other minerals in the Northeast ¼ of the Northeast ¼ of Section 47, Block 24, H. & G. N. Ry. Co. Survey, Wheeler County, Texas;

An undivided 1/64th interest in the oil, gas, and other minerals in the West ½ of the Southeast ¼ of Section 43, Block 24, H. & G. N. Ry. Co. Survey, Wheeler County, Texas;

An undivided 7/64ths interest in the East ½ of Section 54, Block 24, H. & G. N. Ry. Co. Survey, Wheeler County, Texas; and

An undivided 1/16th interest in the Northwest ¼ of Section 44, Block 24, H. & G. N. Ry. Co. Survey, Wheeler County, Texas.

That said royalties are apparently outstanding in the name of George Peckham, the succession of which title is W. H. Peckham, administrator of the estate of George Peckham, and these complainants allege that said royalties were purchased for the use and benefit of
134 the Wichita Royalty Company and were intended to be conveyed to the Wichita Royalty Company, and should be so conveyed by the administrator of said estate so that the same would be subject to any indebtedness owing by the Wichita Royalty Company to these complainants, and that W. H. Peckham, administrator of the estate of G. W. Peckham, is therefore made a party to this suit in order to inquire into and to quiet title in and to said royalties, and to determine the rights of the complainants thereto by reason of the facts pleaded in the following paragraph.

XIV.

That at the time the Wichita Royalty Company, respondent herein, filed its cross-complaint against this complainant it sought judgment against this complainant for the monies expended by G. W. Peckham in the purchase of said Wheeler and Gray County royalties and alleged that the transaction whereby G. W. Peckham purchased and conveyed said royalties to the Wichita Royalty Company was a fraudulent transaction, in violation of the duty said trustee owed to the Wichita Royalty Company, and elected to repudiate the purchase of said royalties and sought a judgment for the purchase price thereof paid by the Wichita Royalty Company against the complainant City National Bank of Wichita Falls, Texas, that since the filing of said cross-complaint the Gray and Wheeler County royalties have become valuable, oil has been discovered thereon, and they are worth in excess of

the purchase price paid, and, if this complainant should be required to respond for the purchase price of said royalties, it would therefore in equity be entitled to a decree divesting the legal title from the Wichita Royalty Company and the administrator of the estate of G. W. Peckham and investing the same, with the pro-
135 ceeds therefrom, in this complainant, City National Bank of Wichita Falls, Texas; that these are the only royalties standing in the name of the Wichita Royalty Company in Gray and Wheeler Counties, State of Texas, and the deed of trust made and executed by E. E. Scannell to secure Charles L. Black, to Ray Bland as trustee, and the foreclosure thereunder, has cast a cloud upon the title to said royalties should it be determined that said royalties did not belong to the Wichita Royalty Company, by reason of the alleged fraud of G. W. Peckham, its trustee.

XV.

The complainants say that the three oil companies, namely, Humble Oil & Refining Company, Continental Oil Company, and The Texas Company, are oil purchasing companies purchasing the oil from certain properties owned by the Wichita Royalty Company, including the Wheeler and Gray County properties, and these oil purchasing companies are made parties solely for the purpose of impounding the proceeds of the oil so that the same might be available for the payment of the indebtedness due these complainants.

XVI.

That the facts hereinabove pleaded are such as to create an equitable lien in favor of the complainants upon all of the assets owned and held by the Wichita Royalty Company and its trustee, E. E. Scannell, and these complainants charge and allege that they are entitled to an equitable lien upon the respective royalties, lands, leases, oil

produced, and the proceeds therefrom to be applied and foreclosed for the satisfaction and payment of the indebtedness due said complainants, and for a cancellation of the trustee's deed made by Ray Bland to Guy Rogers, Trustee under the will of L. B. Rogers, deceased.

136 XVII.

That subsequent to the execution of the notes herein sued upon and on March 4, A. D. 1933, pursuant to a presidential proclamation, the complainant bank closed its doors for the transaction of business and thereafter, on the 15th of March, 1933, at the close of said national banking holiday, made such by the proclamation of the President of the United States, certain stockholders and directors of the complainant bank herein formed another national banking association under the name of the "City National Bank in Wichita Falls," which was duly licensed and authorized to transact business as a national bank in the city of Wichita Falls and which took over the same banking offices, establishment, and place of business as the complainant herein, and on the 15th day of March, A. D. 1933, this complainant made and entered into a contract with the City National Bank in Wichita Falls whereby this complainant bank sold, transferred, assigned, and indorsed to the City National Bank in Wichita Falls (the new bank) certain bills receivable, negotiable instruments, cash items, choses in action, bonds, warrants, and other assets listed in an Exhibit "A" attached to said agreement, including all of its cash; that the total face value of the assets transferred and delivered by the complainant bank to the new bank was in the aggregate sum of $3,455,613.43, and that all of the remaining assets owned by the complainant bank were also pledged to J. T. Harrell, Trustee, with the agreement that the funds derived from the sale of such assets held under such pledge or the collections upon the obligations should constitute a trust fund, should be kept intact and on deposit

in some solvent bank for the purpose of securing the new upon its indorsement, for the purpose of redeeming any assets that became doubtful or losses which might be sustained by the new bank in connection with
137 such transaction, and included in said transfer and pledge to J. T. Harrell, Trustee, was the indebtedness here sued upon, to wit, the notes of the Wichita Royalty Company; that as a consideration for such transfer, sale, assignment, and pledge the City National Bank in Wichita Falls assumed and agreed to pay all of the depositors of the complainant bank herein, as shown by the books of said complainant bank at the close of business on March 14, 1933, which deposits were in the aggregate sum of $3,286,707.46, and no more, and in addition thereto agreed to pay certain other liabilities aggregating $566,-500, which included certain bills payable to the Federal Reserve Bank and others, so that the total obligations assumed by the said new bank were $3,853,207.46; that the total face value of the assets assigned outright was $3,-455,613.43, leaving a deficiency of $397,594.03 due the new bank from the old bank which sum was secured by a pledge, assignment, and transfer of the remaining assets of the old bank, which remaining assets at said time had a face value of $2,699,786.20, a copy of which agreement is attached to this bill, marked Exhibit "D", and made a part hereof; that a note payable to the order of the City National Bank in Wichita Falls (the new bank) was executed by the complainant bank herein to cover such deficiency.

That said contracts and agreements were duly made, authorized, ratified, and confirmed by the respective directors and stockholders of each of said banks, and thereafter the complainant bank herein, pursuant to Section 181, Title 12, of the United States Code Annotated, and on the first of July, A. D. 1933, voted to go into liquidation, two-thirds of all of the stock voting in favor of the liquidation of said bank, and thereupon the shareholders designated C. E. Basham as the Liquidating Agent, who, by

138 virtue of the action of the stockholders and the laws of the United States of America under which they were acting, proceeded to orderly liquidate the assets of the old bank and to apply the proceeds to the debts and obligations thereof; that the said C. E. Basham continued to act as Liquidating Agent until January 8, 1935, at which time the said C. E. Basham resigned and E. A. Deaton was duly selected in the manner provided by law, and has continued to act as Liquidating Agent of said bank since said time and is now the duly acting and qualified Liquidating Agent of the complainant bank herein.

That the City National Bank of Wichita Falls owns the entire assets of the Texas Investment Company, which company owns approximately 200 residential town lots in the city of Wichita Falls in what is known as the "Marlborough Addition," in the vicinity of the new Junior College; that in addition thereto the complainant bank herein owns various and divers other properties, real and personal, in Wichita County, Texas, and elsewhere, all of which are pledged as security for the balance of the deficiency owing by the complainant bank to the City National Bank in Wichita Falls, and that E. A. Deaton has continuously since his qualification as Liquidating Agent been orderly liquidating said property up until the time the notice lis pendens was filed of the cross-complainants' suit against the complainant bank herein, so that since the execution of the contract of March 15, 1933, up until the time of the filing of the cross-action by the Wichita Royalty Company against the complainant bank the assets of the old bank have been in the process of orderly liquidation under the Liquidating Agents appointed by the shareholders; that there is yet due by the complainant bank upon the deficiency note and contract to the City National Bank in Wichita Falls the sum of $189,000.

139 XVIII.

That on June 18, 1936, the Wichita Royalty Company and E. E. Scannell, Trustee, together with others, filed

in the District Court of Wichita County, Texas, for the 30th Judicial District a cross-action and interpleader against the complainant bank herein and its Liquidating Agent, and against the City National Bank in Wichita Falls and against J. T. Harrell as trustee under the pledge agreement, and others, wherein it claimed an indebtedness upon a deposit liability against the complainant bank herein in the sum of $200,000, which suit attacked also the contract between the complainant bank and the City National Bank in Wichita Falls (the new bank) as void and fraudulent, and likewise attacked the pledge of the remaining assets of the old bank to J. T. Harrell, Trustee, and asked for an accounting and winding up of the affairs of the City National Bank of Wichita Falls; that the Texas Investment Company was likewise made a party to said suit and the title to the said city property was attacked in said cross-action and interpleader; that a notice lis pendens was filed of said cross-action and interpleader on the 19th of June, 1936, with the County Clerk of Wichita County, Texas, and duly recorded on June 19, 1936; that said notice lis pendens gave notice that in said suit the Wichita Royalty Company and E. E. Scannell, its trustee, sought a recovery against the City National Bank in Wichita Falls (the new bank) and against J. T. Harrell, individually and as trustee for the City National Bank of Wichita Falls, together with E. A. Deaton and other named parties therein, for the sum of $200,000, alleging that the City National Bank of Wichita Falls was insolvent at the time of the contract between the two banks, and that said notice lis pendens further charged that said transfer, pledge, and assignment between the complainant bank and the City National Bank in Wichita
140 Falls created a preference and that the Wichita Royalty Company claimed an equitable lien upon all of the assets belonging to the City National Bank of Wichita Falls, Texas, at the time of said respective assignments and pledges, and said notice lis pendens further charged that all transfers and conveyances sought to be created between the respective banks were void, a

copy of which notice lis pendens is attached to this bill of complaint, marked Exhibit "E", and made a part hereof, which notice lis pendens has never been vacated and creates a cloud upon the title to all of the assets of the City National Bank of Wichita Falls, the Texas Investment Company, and E. A. Deaton as Liquidating Agent of the City National Bank of Wichita Falls, and has rendered impotent the power of E. A. Deaton as Liquidating Agent to further orderly liquidate the assets of the old bank; that it is impossible, with the cloud outstanding by virtue of said notice lis pendens, for E. A. Deaton to orderly and properly liquidate the affairs of said bank and it becomes necessary therefore to wind up the affairs of the City National Bank of Wichita Falls in this proceeding, in order that the validity of the respective contracts, transfers, and conveyances between the two banks may be inquired into, ascertained, and adjudicated and in order that the claims, liens, and charges of the respective parties may be marshaled, determined, ascertained, and adjudicated.

This complainant bank charges and claims that the transfers so made by this complainant bank to the City National Bank in Wichita Falls were valid and legal and without fraud; that the respondent Wichita Royalty Company is indebted to this complainant bank in the sums hereinabove set out; that it has a valid, equitable lien upon all of the assets of the Wichita Royalty Company and its Trustee as security for the payment of such indebtedness, and that such in-
141 debtedness so owing by the Wichita Royalty Company to this complainant is covered by the pledge to the City National Bank in Wichita Falls and the proceeds from the collection of this indebtedness should be applied to the payment of such sums as may be due and owing by this complainant to the new bank. It denies that it is indebted in any sum to the Wichita Royalty Company and E. E. Scannell, its Trustee, but the Liquidating Agent is powerless to adjudicate these mat-

ters. It is his desire to liquidate, receive, collect, and distribute the assets of the City National Bank of Wichita Falls in an orderly manner and to whom may be entitled to receive the same. The notice lis pendens and the suit filed by the respondent Wichita Royalty Company aforesaid makes it impossible for this complainant and its Liquidating Agent to sell and convey title to prospective purchasers, makes it impossible for the Liquidating Agent (on account of the claimed indebtedness by the respondent Wichita Royalty Company) to disburse funds received from the sale or liquidation and collection of the assets of the old bank, and an orderly winding up of the affairs of the old bank is required in this proceeding, as well as a determination of the validity of the transfer made by the old bank to the new bank under Section 181, Title 12, United States Code Annotated.

Wherefore, premises considered, the complainants pray:

1. For the establishment and validity of an equitable lien against the assets of the Wichita Royalty Company.

2. For an ascertainment and adjudication of the validity of the mortgages, deeds of trust, liens, and claims of the respondents Guy Rogers and Charles L. Black.

3. For a cancellation of the deed from Ray Bland, Trustee, to Guy Rogers, Trustee under the will
142 of L. B. Rogers, deceased, and that said deed be held void.

4. For an adjudication and foreclosure of said equitable lien upon all of the assets, lands, leases, oil runs, and proceeds from the sale of oil produced from the properties owned and held by the Wichita Royalty Company, and for the establishment of the indebtedness due and owing by the said Wichita Royalty Company to the complainants herein, and for the fixing and enforcement of the deficiency in accordance with the rules applicable in equity.

5. For a reformation of the conveyances made by G. W. Peckham while trustee to the Wichita Royalty Company of the royalties situated in Wheeler and Gray Counties, Texas, now standing in the name of G. W. Peckham, deceased.

6. For an ascertainment and adjudication of the validity of the transfers, pledges, assignments, and conveyances made by the City National Bank of Wichita Falls to the City National Bank in Wichita Falls, pursuant to the contract of March 15, A. D. 1933.

7. For an ascertainment and adjudication of such debts as may be due and owing by the City National Bank of Wichita Falls, Texas, and an ascertainment of the creditors of said bank and the rights and securities thereof, and for a winding up of the affairs of the City National Bank of Wichita Falls, Texas, a national banking association.

8. For the removal of cloud against the title of the assets held by the Liquidating Agent and J. T. Harrell, as Trustee, and the complainant herein as cast thereon by the notice lis pendens filed herein, and for the enforcement of all of the rights of the City National Bank of Wichita Falls, as well as its creditors, growing out of the winding up of the affairs of said bank.

143 Complainants pray for such other relief, general or special, as they may be entitled to in a Court of equity.

WEEKS & MORROW,
BULLINGTON, HUMPHREY & KING,
Attorneys for Complainants, City National Bank of Wichita Falls and E. A. Deaton, Liquidating Agent.

The State of Texas,
County of Wichita.

E. A. Deaton, Liquidating Agent, and J. T. Harrell, President of the City National Bank of Wichita Falls, respectively, being duly sworn, say that they are each familiar with the facts pleaded in the foregoing bill of complaint and the same are true.

J. T. HARRELL,
E. A. DEATON.

Sworn To And Subscribed Before Me by E. A. Deaton and J. T. Harrell, this 21st day of December, A. D. 1936.

MRS. GERTRUDE TURNER,
(Seal) Notary Public, Wichita County, Texas.

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144 EXHIBIT "A"—Mortgage, Wichita Royalty Company to Guy Rogers, Dated 2/25/32; omitted from the printed record, being heretofore copied at page 18.

* * * * * * * *

EXHIBIT "B"—List of Royalties in Wichita County, Texas; omitted from the printed record, being heretofore copied at page 19.

* * * * * * * *

EXHIBIT "C"—Trustee's Deed, Dated 8/7/34; omitted from the printed record, being heretofore copied at page 20.

* * * * * * * *

160 EXHIBIT "D".

State of Texas,
County of Wichita.

Whereas, heretofore, on this day, to-wit, the 15th day of March, A. D. 1933, the Board of Directors of The City National Bank of Wichita Falls, at a meeting of said Board, duly and legally called, adopted a resolution which authorized the officers of said Association to commence proceedings for the voluntary liquidation of said Association, under the provisions of the Revised Statutes of the United States, providing for voluntary liquidation of National Banking Associations, and said resolutions also provided for the sale and transfer of certain assets of the said The City National Bank of Wichita Falls, including cash on hand, to the "City National Bank in Wichita Falls," located at Wichita Falls, Texas, in order to fully protect and secure the said "City National Bank in Wichita Falls" for all monies advanced and to be advanced by the said "City National Bank in Wichita Falls" in the assumption and payment of certain liabilities of the said City National Bank of Wichita Falls, as hereinafter provided, and

Whereas, the resolution of the Board of Directors further authorized and directed the officers of the said The City National Bank of Wichita Falls to make and execute such contracts with the "City National Bank in Wichita Falls" as might be necessary and appropriate, in order to carry out the general purpose of the resolution adopted by the Board of Directors of the said The City National Bank of Wichita Falls, reference to which resolution, found on the minutes of said Association, is here made, and

Whereas, the Board of Directors of the "City National Bank in Wichita Falls," at a meeting of said Board, duly and legally adopted a resolution, whereby the said "City National Bank in Wichita Falls" assumed the payment

of the depositors' liabilities, and certain other liabilities
of the said The City National Bank of Wichita
161 Falls, as hereinafter provided, upon condition
that assets of The City National Bank of Wichita Falls should be sold, transferred, assigned, indorsed and delivered unto the said "City National Bank in Wichita Falls," sufficient in amount and value to fully protect and adequately secure against loss the said "City National Bank in Wichita Falls" for any and all amounts as to which payment is assumed under said resolution adopted by the Board of Directors of the said "City National Bank in Wichita Falls," and

Whereas, said Board of Directors of the "City National Bank in Wichita Falls" authorized the officers of said Association to make such contract as might be necessary to carry out the provisions of such resolution, the details of which were to be left to the discretion of said officers.

Now, Therefore, these "Articles of Agreement" entered into, by and between the said "The City National Bank of Wichita Falls," hereinafter called First Party, and the said "City National Bank in Wichita Falls," hereinafter called Second Party.

Witnesseth:

(1) The First Party has sold, transferred, assigned and indorsed, and does by these presents hereby sell, transfer, assign and indorse unto the Second Party, its successors and assigns, the bills receivable and other negotiable instruments, cash items, choses in action, bonds, warrants and other assets, as shown by Exhibit "A" attached hereto and made a part of this contract, and the said First Party has also transferred, assigned and delivered unto the said Second Party all its cash now on hand, the total face value of the assets sold, transferred, assigned, indorsed and delivered unto the said Second Party being

in the aggregate sum of Three Million Four Hundred Fifty Five Thousand Six Hundred Thirteen and 43/100 ($3,455,613.43) Dollars.

162 To Have And To Hold The Same unto the said Second Party, its successors and assigns, vendees and indorsees, the said First Party agrees, for itself and its successors, to warrant and forever defend unto the said Second Party, its successors and assigns, indorsees and vendees, the title to all the assets this day sold, transferred, assigned, indorsed and delivered unto the said Second Party, against any and all persons whomsoever claiming or to claim the same or any part thereof.

(2) First Party also agrees to and with Second Party that Second Party may renew and extend the date of payment of any bills receivable or other negotiable instruments this day sold, transferred and assigned to it from time to time, without notice to the said First Party, or its successors, and in order to fix the liability of the First Party upon its indorsement absolutely and unconditionally, the said First Party agrees, for itself and its successors, that as indorser it waives presentment for payment, protest and notice of protest, and non-payment of any of said bills receivable or other negotiable instruments, of any kind or character, and agrees and consents that Second Party may renew any of said bills receivable as long as it may desire, and may extend the time of payment of any of said bills receivable, and may alter or change the collateral securing any of said bills receivable in any such manner as the officers of said Second Party may, in their discretion deem best, all without in any manner releasing or impairing the liability of the said First Party as an indorser upon said bills receivable or other negotiable instruments.

The First Party likewise agrees with the Second Party that it may sell, transfer, assign, indorse or deliver any of said bills receivable or other negotiable instruments, or

any other of the assets this day purchased, to any other purchaser or purchasers, and that the purchaser or purchasers or indorsees, vendees or transferees of Second Party shall have all the rights extended by the First Party to Second Party under this contract.

163 (3) The First Party also agrees with Second Party that if Second Party shall at any time conclude that any of the bills receivable or other negotiable instruments, or renewals thereof so indorsed to it by First Party, are not worth their face value, that is the amount of the principal shown to be due on said bills receivable or other negotiable instruments, then and in that event the said First Party will upon demand being made upon it or its successors by the said Second Party immediately take up and pay off all of such doubtful bills receivable or other negotiable instruments, or renewals thereof, in cash, in which event the Second Party will transfer such doubtful bills receivable or other negotiable instruments to the First Party without recourse, or if acceptable to the Second Party, the First Party may substitute other bills receivable or other negotiable instruments or assets, or the promissory note of First Party in an amount sufficient to discharge and take up the bills receivable or other negotiable instruments which the Second Party may not believe collectible and worth their face value, and upon which Second Party may have demanded payment or substitution, and in the event First Party refuses or fails, upon the demand of Second Party, to pay cash or substitute other acceptable assets for such bills receivable or other negotiable instruments which Second Party may think doubtful and not worth their face value, then and in that event, it is agreed that the aggregate amount of said bills receivable or other negotiable instruments concerning which the said Second Party may be in doubt as to the value thereof, shall constitute a binding and valid obligation against First Party, its successors and assigns, due and payable upon demand, and suit may be brought against the said First Party for the

aggregate amount of any of such bills receivable or other negotiable instruments, or either of them, and ten per cent additional of the amount of the principal of any or all of such bills receivable or other negotiable in-
164 struments shall be added thereto as attorneys' fees, and this right and privilege shall inure to the benefit of any holder or holders of any of such bills receivable or other negotiable instruments indorsed by First Party to Second Party, and such holder or holders of any such bills receivable or other negotiable instruments shall in like manner become the creditor of First Party by reason of becoming the owner or holder of any of said bills receivable or other negotiable instruments which have been unconditionally indorsed by the said First Party as herein provided.

It is also agreed that Second Party may at its option allow First Party to substitute other bills receivable or negotiable instruments, or its promissory note or notes in lieu of those it is called upon to redeem because doubtful, and as to any such bills receivable or other negotiable instruments substituted in lieu of those of doubtful value, the said First Party agrees that the provisions of this section of this contract shall apply to said substituted bills receivable or other negotiable instruments in the same manner as is herein provided as to the bills receivable and other negotiable instruments this day sold, transferred, delivered and indorsed to the said Second Party, and this obligation shall likewise be valid and binding upon the said First Party, its successors and assigns.

(4) To further secure Second Party in its assumption of the liabilities of the First Party to its depositors and certain other creditors herein mentioned, it is agreed that all of the remaining assets of First Party not this day transferred to Second Party, shall be pledged to J. T. Harrell, Trustee, and that the funds derived from the sale of such assets or any of them, or the collection of
165 any of such obligations, shall constitute a trust fund which shall be kept intact and on deposit in

some solvent bank, for the purpose of securing Second Party upon the indorsement which has this day been made, or which may hereafter be made upon said bills receivable or other negotiable instruments purchased from First Party and for the purpose of redeeming any assets which may become doubtful, this additional security being hereby given and pledged to Second Party for the purpose of absolutely securing and making good the indorsement of the First Party upon its said bills receivable and other negotiable instruments, sold, transferred, assigned and indorsed to Second Party.

(5) The First Party, until final liquidation of its affairs, and final settlement with its shareholders, agrees to maintain its corporate existence and agrees that its officers and directors will at all times, when called upon to do so by Second Party, execute and deliver in the name of First Party all other and further instruments of writing of any kind or character which the officers of Second Party may deem necessary to fully effectuate the transfer of the assets this day delivered.

(6) In consideration of the covenants and agreements herein made by First Party, it is hereby agreed by Second Party that it will assume, and that it does by these presents hereby assume and promise to pay when and as the same are presented for payment, all of the depositors of First Party, as shown by the books of First Party at the close of business on March 14, A. D. 1933, said deposits being in the aggregate of Three Million Two Hundred Eighty Six Thousand Seven Hundred Seven and 46/100-($3,286,707.46) Dollars, and no more, and it also assumes and agrees to pay certain other liabilities of said First Party, amounting to Five Hundred Sixty Six Thousand Five Hundred and No/100-($566,500.00)
166 Dollars, as shown by a list of such liabilities, attached hereto and marked Exhibit "B" and made a part hereof, and no more.

(7) It is distinctly understood and agreed between the parties hereto, that neither the resolutions of the Board of Directors of the respective parties hereto, nor this contract, nor any other act or agreement had or made between the parties hereto, shall in any manner be so construed as to relieve the shareholders of First Party from their legal liability as shareholders to respond, in the event it may be necessary to have recourse upon such shareholders' liability for any deficit which may exist in the value of the bills receivable or other negotiable instruments this day sold, transferred and unconditionally guaranteed by First Party to Second Party, it being the intention of the parties hereto that should Second Party decide that the bills receivable or other negotiable instruments or other assets this day sold, transferred and assigned by First Party, are insufficient to pay the liabilities of First Party which have been paid and which have been assumed by Second Party, then and in that event the Second Party, its successors and assigns, shall have recourse against the shareholders of First Party, as provided by Section 64, Title 12, United States Code Annotated, and other provisions of said Title 12, for any deficiency and for full and complete enforcement of this contract, according to its terms, the intention being to absolutely bind the First Party by unconditional indorsement and unconditional warranty, as hereinabove set forth, for the payment of the face value and interest due upon all the bills receivable and other negotiable instruments this day sold, assigned, transferred and delivered to Second Party, and in case the face value of, that is the principal of any of said bills receivable, are not collected by the said Second Party or any holder or holders thereof, together with all interest due or to become due thereon, according to the face, tenor and effect thereof, or in case said bills receivable or other negotiable instruments, bonds, warrants, cash items and
167 choses in action are at any time deemed uncollectible or doubtful by the said Second Party, or any holder thereof, and First Party fails to take up

said bills receivable in cash or to substitute other acceptable assets to the satisfaction of Second Party, then and in that event, the Second Party, its successors, assigns and indorsers, shall have a valid and binding obligation against the said First Party for the principal, interest and attorneys' fees due on said bills receivable and other negotiable instruments, according to the face, tenor and effect thereof, and may proceed against First Party, or its shareholders to enforce the same, and no lack of diligence on the part of the Second Party, or any of its indorsees, shall constitute any defense to such cause of action, provided that no demand shall be made by Second Party against First Party, and its shareholders, after three years from the date hereof, during which time the guarantee herein and hereby made by First Party to Second Party shall remain in full force and effect.

(8) It is also agreed between the parties hereto, that inasmuch as some of the bills receivable and other negotiable instruments which First Party has this day sold, transferred and assigned to Second Party, have already been pledged to secure other bills payable of First Party, that as to such bills receivable or other negotiable instruments which First Party is unable upon this date to make delivery to Second Party, Second Party may at its option require First Party to execute and deliver to Second Party the promissory note of First Party for the face value of all those bills receivable or other negotiable instruments which First Party has sold to Second Party, and is unable to deliver to Second Party upon this date.

168 (9) It is also understood and agreed between the parties hereto that as to First Party, this guarantee shall be a continuing guarantee, and apply to and be binding upon First Party, its successors and assigns, as to any renewals of notes sold, transferred and delivered by First Party to Second Party during the existence of this agreement, and it is also agreed that Second Party may grant time or other indulgence to the

makers of the bills receivable and other negotiable instruments sold, transferred, delivered and indorsed by First Party to Second Party, and may also make and grant extension and renewals from time to time to the makers of said bills receivable and other negotiable instruments, all without affecting or in any way impairing the validity of this agreement, or the liability of First Party herein.

Second Party may also change the collateral on any of the bills receivable and other negotiable instruments, bonds, warrants, cash items and choses in action, or may make such releases or exchanges of collateral as may to the Second Party and its officers seem best, to effectuate the final collection of the bills receivable and other negotiable instruments, bonds, warrants, cash items and choses in action so indorsed and guaranteed by First Party herein, and this without in any manner affecting or in any way impairing the validity of either the guarantee or indorsement made by First Party to Second Party herein.

In Witness Whereof, the parties hereto have caused these presents to be signed and delivered in duplicate, each an original, by their proper corporate officers, and have caused their proper corporate seals to be hereto affixed, this the 15th day of March A. D. 1933. Erasures and interlineations made and approved before signing.

THE CITY NATIONAL BANK OF
WICHITA FALLS,
By J. T. HARRELL,
President, First Party.

Attest:

ORAL JONES,
Cashier.

CITY NATIONAL BANK IN
WICHITA FALLS,
By J. T. HARRELL,
President, Second Party.

Attest:

JACK JEFFUS,
Cashier.

169 EXHIBIT "A".

List of Bills Receivable and Other Negotiable Instruments, Cash Items, Choses in Action, Bonds, Warrants and other assets this day sold, transferred, assigned, indorsed and delivered to City National Bank in Wichita Falls by The City National Bank of Wichita Falls, as per contract executed on March 15, 1933, to which this list is hereby attached and made a part of.

Cash, Cash Items and due from banks....	$ 191,286.24
United States Bonds and Securities	$1,064,000.00
Other Stocks and Bonds (County Warrants)	65,085.93
Loans and Discounts	$2,532,835.29
Total	$3,853,207.46

EXHIBIT "B".

List of certain other liabilities besides deposits, totaling $3,286,707.46, as shown by books of The City National Bank of Wichita Falls at the close of business on March 14, 1933, which liabilities are assumed by City National Bank in Wichita Falls, as per contract executed March 15, 1933, to which this exhibit is attached and made a part of.

Bills Payable—	
First National Bank, Wichita Falls, Texas..	$125,000.00
First National Bank in Dallas, Dallas, Texas	55,000.00
Federal Reserve Bank of Dallas, Dallas, Texas	386,500.00
Total	$566,500.00

170 EXHIBIT "E".

Wichita Royalty Co. et al Lis Pendens Notice, vs. City Natl. Bank et al.

State of Texas,
County of Wichita.

Notice is hereby given that in a suit pending in the 30th District Court of Wichita County, Texas, and numbered 24549-A, Wichita Royalty Company and E. E. Scannell its Trustee, filed on June 18, 1936, a third amended original answer, cross-action and interpleader against The City National Bank in Wichita Falls, Texas; J. T. Harrell, individually and as Trustee for The City National Bank of Wichita Falls, Texas, W. H. Peckham as administrator of the Estate of G. W. Peckham, Deceased; William Peckham and George Peckham; Robert Peckham; Mrs. Hazel D. Peckham; Texas Investment Company, E. A. Deaton; L. H. Cullum, Leslie Humphrey, Tarlton Morrow, Jack Jeffus, Oral Jones; Frank Kell; Joe Kell; J. J. Perkins, C. W. Snider; F. P. Timberlake, The Humble Oil & Refining Company; The Texas Company; and The Continental Oil Company, wherein Wichita Royalty Company seeks the recovery of $200,000.00 (Two Hundred Thousand Dollars), interest and costs against the several parties as their liabilities appear, and wherein it is alleged that The City National Bank of Wichita Falls, Texas, was insolvent and in contemplation of continued insolvency long prior to March 1, 1933, and that thereupon its assets became a trust fund for the benefit of creditors to ratably distribute the same, and to make no preference therefrom, but that numerous creditors had been preferred by payment through the action of the members of the Board of Directors of said bank to the prejudice of Wichita Royalty Company and with the further allegation that among the assets of The City National Bank of Wichita Falls, Texas, is all of the property standing in the name of Texas Investment Company, and that all of the assets both real

and personal, belonging to The City National
171 Bank of Wichita Falls, Texas, at the time of its insolvency and at the time it became in contemplation of insolvency were and are charged with an equitable lien for the benefit of all creditors, and that all transfers or conveyances thereof, and all liens sought to be created on any part of such assets are absolutely void, and that the parties and corporations to whom such a portion of such assets were transferred and to whom liens thereon were given knew of the insolvency of said bank, and they have held and now hold all of such assets that are still in their possession in trust for Wichita Royalty Company and other creditors; and as security for the $200,000.00 and interest thereon sued for Wichita Royalty Company claims a lien upon all properties standing in the name of Texas Investment Company and standing in the name of The City National Bank of Wichita Falls, Texas, as of the date of its contemplated insolvency as well as upon the assets that may have been assigned or conveyed by said bank thereafter; and prayer is made in said suit that said debt be recovered, said lien enforced, said trust fund restored, and said assets preserved for ratable distribution among the creditors of said bank, and for other relief as from said amended pleading is manifest.

KILGORE & ROGERS,
By RAY BLAND,
Attorneys for Wichita Royalty Company.

AMENDED PLEA TO FEDERAL JURISDICTION AND MOTION TO REMAND.

Filed in U. S. District Court March 27, 1937.

172 (Title Omitted.)

Having pleaded herein under direction of the Court upon its having overruled an original plea to the juris-

diction and motion to remand, and decisions by Courts of high authority having been published since the action upon the original motion, Come Now Wichita Royalty Company and E. E. Scannell, herein called Cross-Complainants, and appear hereby only for the purpose of pleading to the jurisdiction of this Court and for second motion to remand, and for such other purposes as hereinafter shown, and would respectfully show:

I.

That the suit filed herein by City National Bank of Wichita Falls was originally filed in the District Court of Wichita County, Texas, in 1930, said suit so filed being upon the identical cause of action herein asserted against Cross Complainants, to which suit Cross Complainants pleaded these defenses, trial was had, judgment rendered and appeal taken, reversal had and the cause remanded by the highest Court of the State of Texas with instructions to proceed to judgment in accord with the principles of law there stated. It is shown that such suit is not within the original jurisdiction of this Court, is not one described in the Removal Statutes, but is one in which said bank first invoked the State Court's jurisdiction and later removed the same to the National Court, there being no federal question involved, no diversity of citizenship existing, and no cause of action pleaded within this Court's jurisdiction.

173

II.

Likewise Complainant Bank has sued The Texas Company, the Humble Oil & Refining Company and the Continental Oil Company to impound the value of minerals purchased from producing properties in Texas, such suits involving no federal question, no diversity of citizenship existing, and no original jurisdiction vesting in the National Court.

III.

Further invoking the State Court's jurisdiction and prior to petitioning for removal, the Complainant Bank sued Charles L. Black, Guy Rogers and E. E. Scannell, seeking a cancellation of recorded liens and suing for an accounting, later petitioning to remove its suit to the National Court.

IV.

On February 14, 1931, Cross Complainants filed their cross-action in the said suit so filed by Complainant Bank in the State Court, seeking to recover its deposit balance with the Complainant Bank and seeking likewise to recover its loss by reason of breaches of trust by G. W. Peckham as trustee of Wichita Royalty Company with the active participation and through the facilities of the Complainant Bank and J. T. Harrell, which cross-action so filed, the parties thereto appeared and pleaded the same defenses that are herein pleaded, the trial was had, judgment rendered, an appeal taken, a decision adverse to the Complainant Bank rendered by the highest Court of the State, with an order of remand therefrom to the Trial Court to proceed to judgment for Wichita Royalty Company in accord with the principles of law there decided. Thereafter the parties thereto sought to change the forum into which they had voluntarily appeared and moved to remand the cross-action to the National Court.

V.

Cross Complainants filed suit in said State Court against the City National Bank in Wichita Falls
174 and the directors of the City National Bank of Wichita Falls, alleging that upon the insolvency of the City National Bank of Wichita Falls, its assets became a trust fund for the benefit of creditors, one of

whom was and is Wichita Royalty Company; that said new bank came into possession of assets of the insolvent old bank substantially in excess of its debt to Cross Complainants and that the directors of the old bank were instrumental as managing officers of the old bank, in placing the assets of the insolvent corporation beyond the reach of Wichita Royalty Company as a creditor, all of which is more fully shown by pleadings on file.

Cross Complainants would further show that their suit against the old bank is not one to wind up a national bank, but rather to establish a claim against it; that there is no suit herein which involves construction and/or interpretation of a law of the United States; that there is no suit herein arising under and/or based upon any law of the United States; that there is no such diversity of citizenship as to authorize the removal; that there is no suit herein within the original jurisdiction of this Court; that there is no suit herein of the kind described in the Removal Statute; and that this Court is wholly without jurisdiction to hear and determine the suits herein pleaded.

Wherefore, the following alternative prayers are made, each subject and without prejudice to the prayer or prayers that precede it in the order designated as follows:

1. That this cause in its entirety be remanded to the 30th District Court of Wichita County, Texas, whence it was removed;

2. That each and every separate cause of action herein asserted by either party hereto be remanded to the 30th District Court of Wichita County, Texas, prayer being made for remand of all causes of action severally;

3. That as to each cause of action, if any, of which this Court retains jurisdiction, the Court determine
175 and declare the nature thereof, whether cognizable at law or in equity, retaining such, if any,

causes of action properly removed, and that is equitable in nature, upon the equity docket, and transferring to the law docket such causes of action, if any, properly removed to this Court that are actions at law.

4. That the Court enter such other and further orders as in law and equity would redound to an effective adjudication of the several matters raised by the pleadings herein, including the granting of permission to file amended pleadings.

Respectfully Submitted,
KILGORE & ROGERS,
By GUY ROGERS.

The State of Texas,
County of Wichita.

E. E. Scannell, being duly sworn, on oath says that he has read the above plea and motion and the facts therein stated are true.

E. E. SCANNELL.

Sworn to and subscribed before me this 24th day of March, A. D. 1937.

GRACE JARNAGAN,
(Seal) Notary Public Wichita County, Texas.

COURT'S OPINION ON AMENDED PLEA TO FEDERAL JURISDICTION AND MOTION TO REMAND.

176 Filed March 30, 1937.

(Title Omitted.)

On October 11th, 1930, the City National Bank of Wichita Falls, filed a suit against the Wichita Royalty Company and E. E. Scannell alleging that the company was

a trust operating under a declaration made by R. R. Robertson on June 1st, 1920, and that Scannell was the sole trustee. That the trust was engaged in the business of selling lands, oil properties, mineral rights and royalties. That it was the owner of one-half of the capital stock of the Texas Investment Company, a Texas corporation. That on the 26th of June, 1930, Scannell, as such trustee, executed and delivered to the plaintiff a promissory note in the sum of $22,000.00 due sixty days after date, and that a deed of trust had theretofore been executed, in 1925, to J. T. Harrell as trustee, upon certain realty, for the securing of the notes which preceded the last $22,000.00 transaction. That the company was also the maker and indorser upon an obligation of the Texas Investment Company for $23,500.00 and one for $5,000.00 and another for $5,000.00. That the trust and the trustee are without sufficient assets to pay the indebtedness and are insolvent and that its producing oil properties were being depleted. A receiver was sought, together
177 with judgment and foreclosure.

That suit wended its way through the state trial Court, a Court of civil appeals and the Supreme Court of the state and was finally back in the State Trial Court for further proceedings. On June 18th, 1936, the company and its trustee filed its third amended original answer and cross action and impleaded certain other parties theretofore unknown to the record. It sought $200,000.00, and this pleading covered approximately fifty-five pages. It sought to void a transfer of the assets of the City National Bank of Wichita Falls, the original plaintiff, to the City National Bank in Wichita Falls, alleging that it was made while the transferor was insolvent and in voluntary liquidation. It sought an accounting between all of the parties in both the old and the new institution and was really a bill to wind up the affairs of the bank. It sought such remedies against the liquidating agent of the old institution and declared for a right to share in the funds and assets that that agent was administering. Likewise, it sought a ratable distribution,

among the creditors of the old institution, of the assets which are in the hands of the liquidating agent, who had
theretofore been appointed under and by force
178 of the laws of the United States.

One of the subdivisions of the prayer is, "that the old bank be declared to have been insolvent when payments were made by it to the several parties hereto, and that its assets be decreed to be a trust fund for the benefit of all creditors, and that such creditors, parties hereto, who have been preferred be required to restore the amounts received to the trust fund. That all creditors of the old bank be given notice of the pendency of this suit and permitted to intervene herein and set up their rights with respect to such trust fund, and that such fund be ratably distributed between the creditors of the old bank existing at its insolvency." The suit as thus framed was against the City National Bank of Wichita Falls, its successor, the City National Bank in Wichita Falls, J. T. Harrell, as trustee for the City National Bank of Wichita Falls, W. H. Peckham, administrator of the estate of G. W. Peckham, William Peckham and George Peckham, minor sons of G. W. Peckham, Robert W. Peckham, Mrs. Hazel D. Peckham, The Texas Investment Company, E. A. Deaton, liquidating agent of the City National Bank of Wichita Falls, L. H. Cullum, J. T. Harrell, Leslie Humphrey, Jack Jeffus, Oral Jones, Frank Kell, Joe Kell, J. J. Perkins, C. W. Snider and F. P. Timberlake, each stockholders and directors of the City National Bank
179 of Wichita Falls. In paragraph 39 of that rather unusual pleading is this statement, "and they now sue for themselves and all other creditors similarly situated, and invoke the general equity power of the Court to assert the liens upon all such properties for an accounting, for a restoration of such trust funds as may have been dissipated and/or paid to creditors, for their ratable interest therein, for the determination of the amount of personal liability of the old directors and for judgment thereon, all with the view and to the end that cross complainant be accorded an equal participation in

the assets of the old bank as every other creditor has or may obtain."

It was also alleged that in March, 1933, when, by Presidential proclamation, the bank was closed, that it never re-opened, but was superseded by the City National Bank in Wichita Falls, which succeeded to the assets and liabilities of the old institution and promised to settle such liabilities.

On July 1st, 1936, a petition for removal was filed by the old as well as the new City National Bank and by all of the other defendants in the cross-action.

A motion to remand and a motion for lack of jurisdiction were passed upon by this Court a little later on at the Dallas division of the district.

180

At the conveying of this term of Court the plaintiffs in the cross-action have presented these amended motions and with much earnestness ask for a reconsideration by the Court of its previous refusal to either remand or deny jurisdiction.

It is too late now to defend the right of a plaintiff who begins action in the State Court to remove to the National Court if and when national questions arise. The Courts have joined in a procession of opinions supporting that right. The few cases that were to the contrary at the beginning are decidedly in the minority.

Pierce vs. Desmons, 11 F., (2), 327;
San Antonio vs. Shandy, 29 F., (2), 579;
Bankers vs. Insurance, 85 F., (2), 856;
Waco vs. U. S. Fidelity, 293 U. S., 141;
Mason City vs. Boynton, 204 U. S. 570;
Zambrunn vs. Schwartz, 17 F., (2), 609;
American Fruit Growers vs. LaRoche, 39 F., (2) 243;
Guarantee Co. vs. Hanway, 104 F., 369;
Wyman vs. Wallace, 201 U. S., 229.

That the old bank had begun litigation in the State Courts did not prevent it from removing the cross complaint, as soon as it was presented, to the National Court. Since its original suit was based upon an alleged indebted-

ness by the cross acting complainant, in which cross action all of the dealings between it and many others, with the old bank, were pleaded there was no im-
181 propriety in bringing the entire suit to the National Court.

The petition for removal, somewhat epitomized and shortened, claimed that the remedies sought in the cross action classed the case as one arising out of the laws of the United States. There are at least two statutes which seem to cover, almost entirely, the remedies sought. One is title 12 of section 91, U. S. C. A., which relates to transfers of notes and other evidences of debt owing to any national banking association or of deposits to its credit, and specifies that such shall be utterly null and void under the circumstances therein portrayed. That is the section which denies the right to have attachments or injunctions or executions against a national banking association. Title 12 of section 181 U. S. C. A., deals with the right of an association to go into liquidation and to designate a liquidating agent who shall conduct such procedure in accordance with the law and under the supervision of the board of directors. Then there is title 28 of section 41, paragraph 16, U. S. C. A., which gives the National Court jurisdiction of "cases for winding up the affairs of any such bank," meaning national bank.

This Court said in Citizens National Bank in Waxahachie vs. Citizens National Bank of Waxa-
182 hachie, 9 F., (s) 513, that "such suits as are brought by receivers of banks, by trustees, or by others against banks, which would deplete the fund that might be used for the liquidation of its affairs, suits for assessment, are all, plainly, within that phrase of the statute which allows a case for 'winding up the affairs of any such bank' to be tried in the National Court." Citing a long list of authorities.

Counsel present the recent case of Gully vs. First National Bank in Meridian, 57 Supreme Court reporter, 96, decided November 9th, 1936, and, Connally vs. First

State Bank, 86 F., (2) 683, as recent authorities, which delve deeply into the meaning of the phrase, "arising under the constitution and laws of the United States." I have been unable to find anything in either of those cases which denies the National Court jurisdiction over a cause which comes under the statutes above mentioned. The Gully case was a simple suit by a state tax collector to collect a debt. The Connally case was a mere demand for a money judgment. Claims may be established in causes such as those and presented for settlement. That is not the case here pleaded. Here the plaintiffs in the cross action seek to take property, to undo liens, to re-apportion, to, in short, perform all of the essential requisites of a winding up process. It would be
183 impossible—and impossible is a big word—to grant the relief to the complainants in the cross-action without literally taking away from the liquidating agent that which he holds and, without re-apportioning to creditors of the old institution payments upon their obligations. Lawrence National Bank vs. Rice, 83 F., (2), 642; Edwards vs. Gas Co., 184 F., 979; Omaha Nat. Bank vs. Federal Reserve Bank, 45 F., (2) 511.

It is the presence of a federal question which determines the jurisdiction. When such a question forms an ingredient in the original cause it is removable, even though there are other questions of fact and law involved.

New Orleans vs. Mississippi, 102 U. S. 135;
Omaha Horse Railway Co. vs. Cable Tramsway Co., 32 F., 729;
See also, Texas Pipe Line Co. vs. Ware, 15 F., (2) 171.

The motions challenging jurisdiction and to remand may be overruled.

WM. H. ATWELL,
United States District Judge.

At Wichita Falls, Texas, March 30th, 1937.

184 ORDER OVERRULING MOTION TO REMAND.

Filed & Entered March 30, A. D. 1937.

(Title Omitted.)

This Day came on to be heard the second motion to remand filed herein by the Wichita Royalty Company and E. E. Scannell, cross-complainants, the cross-complainants, Wichita Royalty Company and E. E. Scannell, appearing by their attorney, Guy Rogers; the defendant J. T. Harrell appearing by his attorney, T. R. Boone; and the plaintiff and the interpleaded defendants appearing by their attorneys, Tarlton Morrow and Leslie Humphrey, and said motion being duly argued and submitted to the Court, and the Court having duly considered the same and having filed written opinion herein, and being fully advised in the premises, said motion challenging the jurisdiction of this Court and to remand is hereby overruled, and said motion is therefore in all things overruled and denied.

The cross-complainants, Wichita Royalty Company and E. E. Scannell, its Trustee, duly excepted to said
185 order overruling and denying said motion to remand, which exceptions are hereby allowed and entered.

WM. H. ATWELL,
United States District Judge.

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186 WICHITA ROYALTY COMPANY'S ANSWER TO CITY NATIONAL BANK'S REPLEADED BILL OF COMPLAINT.

Filed in U. S. District Court March 27, 1937.

(Title Omitted.)

At a time when their first plea to this Court's jurisdiction and motion to remand has been overruled, with ex-

ception allowed and entered, and at a time when there is pending a second plea to the Court's jurisdiction and motion to remand, but without prejudice to their reserved right to be heard upon such second plea to the jurisdiction and motion to remand. come now Wichita Royalty Company, a joint stock association, and E. E. Scannell, herein called Respondents, and with leave of the Court first had and obtained, amend their pleading herein so that their answer to the amended Bill of Complaint filed herein by City National Bank of Wichita Falls and E. A. Deaton, its liquidating agent shall be as follows:

I.

Respondents say that the causes of action asserted by Complainant Bank against these Respondents are wholly between citizens of Texas, that they involve no federal question and are not such suits as are within the jurisdiction of this Court, and should be dismissed or remanded to the State Court, for which prayer is respectfully made.

II.

Answering paragraph I of said Bill of Complaint, Respondents admit the facts therein alleged, other than the residence of the Humble Oil & Refining Company, the Continental Oil Company, and the Texas Company, concerning which Respondents have no information and therefore deny the residences of such corporations to be other than in Texas. Respondents further say that Complainant Bank is in voluntary liquidation with E. A. Deaton, its liquidating agent, pursuant to the vote of stockholders of said Bank; Respondents further say that E. A. Deaton is not an officer of the United States.

187

III.

Replying to Paragraph II of Complainant's Bill, Respondents deny that this Honorable Court has jurisdiction

to hear and determine the suits alleged by Complainant; but admit the Complainant Bank to be a national banking association in voluntary liquidation by vote of its stockholders; admit that E. A. Deaton is the liquidating agent of said bank by vote of its stockholders; but deny the suit to be one for winding up the affairs of the City National Bank of Wichita Falls, Texas.

Respondents admit the suit to be of a civil nature, but deny its being or arising under the Constitution and laws of the United States, of which the District Courts of the United States are given original jurisdiction; deny that it is a suit brought upon and which involves the construction of Section 91, Title 12 of the United States Code Annotated, with reference to the validity of a transfer of notes, bonds, bills of exchange, and other evidence of debt owing to the Complainant herein, the City National Bank of Wichita Falls, and of deposits to its credit and the assignments of mortgages and securities on real estate and deposits of money heretofore made by the Complainant City National Bank of Wichita Falls, Texas, to the interpleaded defendant City National Bank in Wichita Falls, made such in the cross-action of the
188 Wichita Royalty Company against the City National Bank in Wichita Falls pursuant to a contract and assignment dated the 15th day of March, 1933, executed by the City National Bank of Wichita Falls and the City National Bank in Wichita Falls; and Respondents assert that Complainant's suit against Respondents is but for debt and does not involve the winding up of a national banking association; does not involve a federal question; does not arise under the Constitution and laws of the United States, and does not involve the construction of, nor is it bottomed upon Section 91 of Title 12 of the United States Code, or any other federal law.

IV.

Replying to Paragraph III of Complainant's Bill, Respondents say that Wichita Royalty Company is a joint

stock association, with sole management and control vested in a trustee who is now E. E. Scannell, and that there are certain certificate holders not residing in Texas, but Respondents say that such certificate holders are amenable to processes of law and have been since Complainant's cause of action arose and are personally liable for the payment of any debt due the Complainant by the Respondents.

V.

Replying to Paragraph IV of Complainant's Bill Respondents say that on June 26, 1930, E. E. Scannell, as trustee of Wichita Royalty Company, signed the note described by Complainant; admit that the note is in extension and renewal of notes theretofore executed by G. W. Peckham when he was trustee of said company; deny that E. E. Scannell, during the trusteeship of G. W. Peckham, was secretary-treasurer of Wichita Royalty Company; admit that said note has not been paid except in the manner and to the extent hereinafter specifically pleaded; deny it to be a valid debt and obligation of Wichita Royalty Company and its trustee.

189

Further replying to Paragraph IV of Complainant's Bill, Respondents deny that it is indebted to the Complainant Bank upon the balance of a promissory note dated June 9, 1930, executed by Texas Investment Company and payable to the order of Complainant Bank; deny such note to have been duly and legally endorsed by Respondents, but admit its endorsement by J. T. Harrell and J. A. Kemp; deny that there was any consideration supporting the indorsement of Wichita Royalty Company's name thereon and affirmatively say that the trustee was without power or authority to bind his trust by indorsing the commercial paper of the corporate principal; admit that such note was secured by a pledge of certain collateral sold by Complainant bank; deny that Respondents are indebted to complainant for any part of the deficiency.

VI.

Replying to Paragraph V of Complainant's Bill, Respondents say that it does have sufficient assets and has had sufficient assets to pay all of its just obligations; that the thirteen hundred shareholders of Wichita Royalty Company are solvent and, under the laws of the State of Texas where the rights of the parties accrued, and under which law such rights are determined, there exists a personal liability of the stockholders of Wichita Royalty Company for the payment of such debts; Respondents therefore deny that complainant must look alone to the properties of said trust for the satisfaction of any debts determined to be due it by Wichita Royalty Company.

VIII.

Replying to Paragraph VI of Complainant's Bill Respondents deny that the Declaration of Trust
190 and Articles of Association create a trust for the benefit of creditors of Wichita Royalty Company. With respect to the subdivision of said Paragraph, Respondents reply:

(A) Respondents admit that the trustee shall hold the funds and properties in trust for the purposes and with the powers and limitations set out in the Declaration of Trust;

(B) That the affairs of the Association shall be managed by one trustee; that title to all property acquired or to be acquired shall be held in trust in the name of the trustee as such trustee, with exclusive power and authority of management within, but not beyond the scope of the business entrusted to the trustee, namely, the purchase and sale of oil and gas royalties and other oil and gas properties;

(C) Respondents admit the Declaration of Trust does provide substantially as alleged in this subdivision;

(D) Respondents admit the articles of association contained other provisions; that it provides for a capital stock of $1,000.00; that certificates of beneficial ownership should be issued to shareholders; but deny that the assets of the association should be impressed with a trust and lien for the payment of all obligations of the trust estate; Respondents deny that the Declaration of Trust contains any provision, the effect of which was to create for the benefit of the creditors of the association, especially in the case of insolvency, a trust fund upon all of the assets of the association, and deny that it was the duty of the trustee to treat the same as a trust fund for the benefit of creditors ratably and alike and to suffer preferential transfers or payments, and deny that it would be an act of bad faith on the part of the trustee to treat the assets of the trust in a manner other than as a trust fund for the ratable benefit of creditors. In this connection Respondents say that, unlike a corporation,
191 the assets of Wichita Royalty Company are not alone available to pay its debts, in that Wichita Royalty Company was created under and existed by virtue of the laws of the State of Texas, and that the stockholders of Wichita Royalty Company under the laws of Texas, were jointly and severally liable for the payment of all just debts.

Respondents deny that the indebtedness herein sued for is an indebtedness incurred by the trustee in the management and conduct of the business of the trust and pursuant to Articles of Agreement aforesaid.

VII.

Replying to Paragraph VII, Respondents deny that the trustee has diverted the properties and proceeds of the trust in an effort to defeat all ultimate liability herein; deny that the properties and funds of the trust have been used for any purpose other than authorized trust pur-

poses; admit properties owned by Wichita Royalty Company are in part producing oil royalties; deny that the income therefrom should be applied to the payment of Complainant's alleged indebtedness; deny that such funds and the income therefrom have been so used as to hinder, delay and defraud the Complainants; deny that the assets and moneys of the trust, less such part thereof as has been reasonably and necessarily expended, will not be forthcoming for the satisfaction or the payment of any just debt.

IX.

Replying to Paragraph VIII of said Bill of Complaint, Respondents admit the ownership of the properties therein described and their value; admit receiving some income therefrom, but allege that most of such income has been impounded by the corporate defendants herein; admit the execution of a mortgage as security for
192 reasonable and necessary expenses incident to this litigation, and say that such funds as have been received under the terms of such mortgage have been used for authorized trust purposes.

Respondents admit their ownership of other royalties in the state of Texas, and admit their ownership of some of the properties scheduled in Exhibit B attached to Complainant's Bill, but say that during the trusteeship of G. W. Peckham he was personally interested in transactions whereby properties were sold to his trust, which transactions Respondents have sought and seek to repudiate and to declare invalid and not binding, and to that extent and as disclosed by Respondents' Cross Bill of Complaint they deny the ownership of properties tendered back, including:

The mineral interest in B. R. I. R. 39, J. E. Dowdle survey, Abst. 2215, in Young County, Texas; being Item 12 in Complainant's Bill;

Item 2 in Complainant's Bill, being 1/16 of 1/8 royalty in Blk. 46, Meade's L M Pasture subdivision of the Thomas Survey, Abst. 458 in Archer County, Texas;

Item 3, being 1/16 of 1/8 royalty in Blk. 9 of Crawford Pasture Subdivision of the Isaac Holman survey in Archer County, Texas.

Item 5, being an undivided 1/8 interest in 170 acres in Archer County known as the Porter Ranch;

Item 1, being 1/32 royalty in the E. 30 acres of a 71-acre tract of the Milligan survey, Callahan County;

Item 1 of Wilbarger County properties, being a royalty in the S. 40 acres of the North 60 a of the W. 1/2 of the N. E. 1/4 of Sec. 83, Blk. 14, H. & T. C. Ry. Co. survey in Wilbarger County; and

Hartley County Item No. 1, being a 1/16 royalty of Section 54, Hartley County, Texas.

In this connection Respondents say that the properties listed above have been disclaimed by Respondents in an offer to do equity in seeking to recover against Complainant and Wichita Royalty Company's former trustee in an accounting wherein the acts and conduct of the former trustee, G. W. Peckham, in selling as an individual to himself as trustee certain properties, and such former trustee's causing the trust books to show the trust's ownership of properties which it never acquired, all of which more fully appears in a Cross Bill filed in this suit by Wichita Royalty Company against Complainant and others. It is the intention of this denial to admit the ownership of such properties as Wichita Royalty Company claims title to, but to deny ownership as to such properties which in its Cross Bill it seeks to repudiate.

193

X.

Replying to Paragraph IX, the Respondents deny the execution of the Deed of Trust pursuant to a plan to defeat the ultimate payment of this liability and affirmatively say that the Deed of Trust was executed for the purpose of securing Chas. L. Black in the payment of a reasonable attorney's fee and the payment to Guy Rogers of such expenses to which he might be put both in the prosecution of Respondent's Cross Bill herein, and defense of Complainant's suit. Respondents say that said Deed of Trust did not describe any specific properties, but described such properties in the State of Texas as were owned and claimed by Wichita Royalty Company, it being intended by the trustee in the execution of such Deed of Trust to give a lien only upon such properties as it claimed to own and not to assert title to or execute a lien upon properties which it had or could repudiate as not being binding upon the trust by reason of the personal interest in its acquisition by the former trustee G. W. Peckham. Respondents deny that they gave to Guy Rogers an assignment of all oil and gas and the proceeds thereof produced from Texas properties.

XI.

Replying to Paragraph X of said Bill of Complaint, Respondents admit the execution of the trustee's deed to Guy Rogers, trustee, but deny that such properties were at the time of the alleged value of $20,000.00.
194 Respondents say that at the time of the trustee's sale the Complainant Bank had obtained judgment against Wichita Royalty Company in excess of $40,000.00 in this cause, then pending in the State Court, had abstracted its judgment in the several counties of Texas, had levied upon and had bought at sheriff's sale the Gray and Wheeler Counties properties and expressed an intention to sell at foreclosure sale all of the assets of

Wichita Royalty Company. The Gray and Wheeler Counties properties were originally of little or no value, but subsequent to judgment and prior to the removal of this cause to the Federal Court, such properties did become valuable and are now worth in excess of the $20,000.00 which Complainant Bank alleges them to be worth.

The purchaser at trustee's sale took legal title to such of the properties as it might ultimately be determined were owned by Wichita Royalty Company, intending to hold such title as security for the $250.00 paid Chas. L. Black for the account of Wichita Royalty Company upon a lawful debt, and to reconvey to the Wichita Royalty Company the legal title at such time as Wichita Royalty Company had paid the indebtedness described in the Deed of Trust. Upon the properties' becoming valuable and it appearing to the best interest of the Royalty Company to claim rather than continue its prior repudiation of the Gray and Wheeler Counties, Texas, properties, the purchaser at such trustee's sale released and relinquished any right or claim thereto and caused the same to be filed for record.

XII.

Replying to Paragraph XI of said Bill of Complaint, Respondents deny that the sale and foreclosure was for the purpose alleged, but was for the purpose shown in the preceding paragraph.

195

XIII.

Replying to Paragraph XII of said Bill of Complaint, Respondents deny that at any of the times mentioned by Complainant Bank, the assets of Wichita Royalty Company were inadequate to pay its indebtedness, and say that it has been and is able and has sufficient assets with which to discharge its every legal liability. Respondents

deny the applicability of the trust fund doctrine to a joint stock association whose individual shareholders are jointly and severally liable for the indebtedness due by the association. Respondents say that the mortgage, assignment, and Deed of Trust were given for value received and are valid securities for the indebtedness secured thereby.

XIV.

Respondents admit the allegations of fact contained in Paragraph XIII of Complainant's Bill.

XV.

Replying to Paragraph XIV of Complainant's Bill, Respondents admit that originally it sought to avoid its ownership of the Gray and Wheeler Counties properties, and sought to recover the purchase price paid therefor because of the personal interest therein of the former trustee, but since such properties are now worth in excess of the purchase price paid, Wichita Royalty Company has elected to retain and claim the title thereto.

XVI.

Replying to Paragraph XV of said Bill of Complaint, Respondents admit that the three oil companies named are purchasing oil from the properties alleged.

XVII.

Replying to Paragraph XVI of said Bill of Complaint, Respondents deny the existence of payments or other fact sufficient to create an equitable lien in favor of the Complainant upon the assets of Wichita Royalty
196 Company; deny Complainants to be entitled to an equitable lien upon any of the properties of Wichita Royalty Company, and deny Complainant's right to have the trustee's deed canceled in that, as above alleged, a release has been filed of record.

XVIII.

Respondents are without sufficient information and knowledge to make reply to the averments of fact set out in Paragraph XVII of Complainant's Bank's Bill of Complaint and therefore neither admit nor deny such allegations, which allegations deal with and relate to transactions between the Complainant Bank and the City National Bank in Wichita Falls.

However, with respect thereto Respondents say that such averments form no proper part of the Bill of Complaint in that the Complainant Bank declares upon one note and the indorsement of another, and seeks relief against Respondents thereon, and transactions had with strangers to such transactions are immaterial either in support of or as a defense to the rights of Complaint to recover thereon, such averments stating no equity germaine to Complainant's suit upon such notes and should be stricken, for which prayer is respectfully made.

XIX.

Replying to Paragraph XVIII of Complainant's Bill, Respondents say that they did file the suit against the Complainant Bank and the others alleged, claiming the indebtedness pleaded, attacking as fraudulent the transactions between the old and the new banks as being invalid to the extent that the new bank and others were preferred as creditors during the insolvency of the old bank, there asserting that upon the insolvency of the old bank its assets became a trust fund for the ratable benefit of all of its creditors and that the new bank and
197 the directors of the old had become preferred and had received substantial assets of an insolvent corporation. Respondents deny, however, that they sought and asked for the winding up of the affairs of the City National Bank of Wichita Falls; they admit the filing

of notice of Lis Pendens, as alleged, but deny that its filing has rendered impotent the power of the liquidating agent orderly to liquidate the assets of the old bank, alleging that its filing only prevents to some degree the liquidating agent's preferring creditors to the prejudice of Respondents. They deny that it becomes necessary in this action to wind up the affairs of the City National Bank of Wichita Falls, and deny that it is necessary in this proceeding to inquire into the validity of all transactions between the two banks except to the extent such may be appropriate under the Bill of Cross Complaint filed herein separate and apart from this answer.

Respondents deny that the transfers made by the Complainant Bank, The City National Bank of Wichita Falls, were valid and legal and without legal fraud, but say that such averment of Complainant Bank and other averments of a kindred nature are not germaine to any matter properly a part of the Bill of Complaint upon a promissory note and the indorsement of another, alleging that such averments should be stricken as stating no equity, for which prayer is made.

Respondents deny any indebtedness to the Complainant Bank, deny that said Bank has a valid equity lien upon any of the assets of Wichita Royalty Company; they are without information as to the ownership of the causes of action asserted by Complainant Bank and therefore neither admit nor deny the allegations with respect thereto.

Respondents are without information and knowledge sufficient to answer the allegations with respect to the powers and desires of the liquidating agent and
198 therefore neither admit nor deny the allegations with respect thereto.

XX.

The $22,000.00 note sued on by Complainant Bank was but in renewal of a $15,000.00 note dated January 16,

1926, and a $25,000.00 note dated March 1, 1926. Each loan was negotiated by G. W. Peckham, former trustee of Wichita Royalty Company, through J. T. Harrell, chief executive officer of Complainant Bank. G. W. Peckham was the joint maker of the original $25,000.00 note. These original loans were made at the times, in the manner, under the circumstances, and for the purposes hereinafter shown.

XXI.

Further pleading with respect to Complainant Bank's suit upon the indorsement of Texas Investment Company's note, Respondents say that they received no consideration for such indorsement, the signing trustee was wholly without authority to bind the trust by such indorsement, the powers of the trustee were limited to dealing in oil and gas royalties and other oil and gas properties under the requirement that the title thereto be taken in his name as such and by him managed, operated and controlled. Such trustee had no power or authority to accept stock in the Texas Investment Company whereby management of that part of the business was entrusted, not to the trustee as such, but to the Board of Directors of a corporation not engaged in the oil and gas business.

Respondents further say that G. W. Peckham acquired title in his own name and with his own funds to an original interest in Marlborough Addition and held, used, occupied, and possessed the same and exercised dominion thereof and claimed title thereto during his life, having prior to his death joined other parties at interest in a conveyance with covenants of warranty of all of the assets of Marlborough Addition to Texas Investment Company, a corporation, which corporation became an innocent purchaser for value of the title to said assets that stood of record in the name of G.

199

W. Peckham by whom they were conveyed to the corporation.

Respondents further say that Complainant Bank first sued upon such indorsement in the State Court and litigated the matter to an adverse decision before the Supreme Court of Texas, with a decision reached and mandate issued directing the Trial Court to exonerate Respondents from liability by reason of such indorsement, the law of the case being fixed and determined to be that the Respondents are not liable on such indorsement.

Agreeable to and in conformity with said mandate, Complainant Bank discontinued its suit in the State Court of any alleged cause of action upon such indorsement and by amendment filed in the State Court prior to removal, omitted from such amendment any suit upon such indorsement. The present suit was first filed in this Court after its removal from the State Court and more than four years elapsed between the maturity of said obligation and the filing of suit thereon, and such cause of action is wanting in consideration, is not supported by authority in the trustee to have obligated Respondents thereon, is barred by limitation, and is unforceable by reason of laches, stale demand, and the law of the case is fixed and determined and adjudicated by the Supreme Court of Texas.

XXII.

Respondents further say with respect to the $22,000.00 note declared upon by Complainant Bank that suit thereon was first filed in the State District Court and there litigated to an adverse decision in the Supreme Court of Texas, which Court remanded such cause of
200 action for the purpose of ascertaining to what extent, if any, the proceeds of the 1926 loans in renewal of which the present note was executed, were

used for authorized trust purposes and as above shown, such proceeds were not so used for authorized trust purposes and upon crediting the 1926 loans with the amount thereof subsequently paid by the trust, together with the amount thereof used for unauthorized trust purposes, leaves nothing due thereon and Complainant Bank is not entitled to recover any amount.

In further reply Respondents here adopt the allegations of all other pleadings filed herein by Wichita Royalty Company and E. E. Scannell, trustee, the same by reference as though copied herein.

Wherefore, having fully answered, Respondents make the following alternative prayers, each pleaded in the order named:

1. That Complainant's suit be dismissed or remanded to the State Court whence it was removed by the Bank which brought the suit in the State Court;

2. That Complainant take nothing against the Respondents and that the Respondents be discharged of liability, and that they recover their costs herein incurred.

KILGORE & ROGERS,
(Signed) By GUY ROGERS,
Attorneys for Wichita Royalty Company and its Trustee.

The State of Texas,
County of Wichita.

E. E. Scannell, being sworn, upon oath says that the facts stated in the above answer are true.

(Signed) E. E. SCANNELL.

201 Sworn to and subscribed before me this, the 26th day of March, A. D. 1937.

(Signed) GRACE JARNAGAN,
(Seal) Notary Public, Wichita County, Texas.

202 ANSWER OF CHARLES L. BLACK AND GUY ROGERS.

Filed March 27, 1937.

(Title Omitted.)

Come now Charles L. Black and Guy Rogers, and, without waiving special plea to the jurisdiction of this Court and motion to strike by way of plea in abatement, and expressly reserving their right to be heard thereon and in reply to the complaint filed herein, adopt as their reply thereto the answer and cross-action of Wichita Royalty Company against the City National Bank of Wichita Falls.

In further answer thereto these Respondents say that they are the beneficiaries in the instruments alleged by Complainant Bank to have been executed by Wichita Royalty Company, such instruments being intended but to cover such properties as were claimed and owned by Wichita Royalty Company and not repudiated by it, and to secure Charles L. Black in the payment of $5,000.00, or so much thereof as is equivalent to reasonable compensation for his professional services as an attorney in this cause prior to final judgment and to secure Guy Rogers in the payment of such reasonable expenses as he might incur for and on behalf of Wichita Royalty Company in the prosecution and/or defense of this law suit, as appears among the papers of this case.

These Respondents say that such instruments were given as security for future items of indebtedness and constitute valid and subsisting liens upon said respective properties to secure said respective beneficiaries in the ultimate payment to them of such an amount as
203 may be due at the final adjudication of the matters herein at issue. They therefore say that it can not be now determined the exact amount that will become due and payable under the terms of said instru-

ments, but that a present accounting should be had to determine the several amounts due thereunder to these respective parties, that said lien be fixed and determined as valid security therefor, as well as for such other and further future sums as arise prior to the final judgment in this controversy.

These Respondents respectfully allege that this Court is without jurisdiction to hear and determine the matters against them raised by the Complainant Bank herein and that this Court should have and take no further jurisdiction in the matter, but should strike the allegations against these Respondents.

Wherefore, prayer is made that the validity of said liens created by the execution of the instruments alleged by the Complainant Bank be fixed and determined as superior to any right, claim or asserted lien by the Complainant Bank, that said respective liens be fixed, adjudicated and preserved, and for general and special relief.

KILGORE & ROGERS,
By GUY ROGERS,
Attorneys for Respondents, Charles L. Black and Guy Rogers.

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204 DISCLAIMER OF GUY ROGERS, TRUSTEE.

Filed March 27, 1937.

(Title Omitted.)

Guy Rogers, as trustee under the will of L. B. Rogers, deceased, disclaims any interest in the subject matter of this litigation, and disclaims any interest in any of the properties therein described, and says that as such trustee he became the purchaser at trustee's sale of certain mineral interests, but that such legal title so taken was but in trust for Wichita Royalty Company, a release and relinquishment having been subsequently filed for record.

Wherefore, prayer is made by such Trustee that he be discharged herein as such with his costs.

GUY ROGERS,
Trustee under the will of L. B. Rogers, deceased.

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205 WICHITA ROYALTY COMPANY'S REPLEADED CROSS BILL OF COMPLAINT, CROSS ACTION AND INTERPLEADER AGAINST CITY NATIONAL BANK, ET AL.

Filed in U. S. District Court Dec. 12, 1936.

(Title Omitted.)

At a time when their first plea to this Court's jurisdiction and motion to remand has been overruled with exceptions allowed and entered, and at a time when the Court has directed their filing recasted pleadings within ten days from December 3, 1936, but without prejudice to their reserved right to file a second plea to this Court's jurisdiction and motion to remand, come now Wichita Royalty Company, a joint stock association, existing under and by virtue of the laws of the state of Texas, a citizen of Texas, with recorded declaration of trust in Wichita County, Texas, and E. E. Scannell, its trustee, and a citizen of Texas, hereinafter called Cross-complainants, and recast their pleadings herein so that the cause of action hereinafter stated against the cross-defendants and impleaded defendants hereinafter named, shall be as follows:

I.

Cross-complainants say that the cause of action herein asserted was first asserted in the District Court of Wichita

County, Texas, and that the plaintiff bank answered thereto and litigated the matters thus joined to the adverse decision of the Supreme Court of Texas, the plaintiff thereafter filing a petition and bond to remove the same to this Court, the suit being wholly between citizens of Texas, no Federal question being involved, and the suit being not otherwise within the original jurisdiction of this Court.

206

Wherefore, said cause of action should be remanded to the State Court whence it came, for which prayer is respectfully made.

II.

Wichita Royalty Company and E. E. Scannell, its trustee, now complain of the City National Bank of Wichita Falls, J. T. Harrell, Trustee, and E. A. Deaton, Liquidating Agent, and of W. H. Peckham, Administrator of the estate of G. W. Peckham, deceased, Hazel Peckham, surviving wife of G. W. Peckham, deceased, William Peckham, and George Peckham, minors, and Robert Peckham, sole surviving children of G. W. Peckham, deceased, and Texas Investment Company, a dissolved corporation that was and is a citizen of Texas.

III.

Cross-complainants would show that Wichita Royalty Company is a joint stock association with E. E. Scannell its trustee, said association being organized and existing under the laws of the state of Texas, with a recorded declaration of trust in Wichita County, Texas, which defines the duties and privileges of the trustee and limits such trustee, whose dealings are solely and only in oil and gas royalties and other oil and gas properties, requiring the title to all property to be held in the name of the trustee as such trustee, and forbidding the use of the trust property for the personal advantage or private use of the trustee.

IV.

That E. E. Scannell is the present duly qualified and acting trustee of said association, succeeding G. W. Peckham as such trustee, who became such trustee in January, 1923, and continued as such until his death in
207 November, 1929.

V.

Cross complainants say that the City National Bank of Wichita Falls, Texas, is a National banking institution, and citizen of Texas with its principal office and principal place of business in Wichita County, Texas, with J. T. Harrell, its President, who has at all times material to this controversy, been the chief executive officer of said bank.

VI.

That E. A. Deaton is the Liquidating Agent of said plaintiff bank, pursuant to appointment as such agent by the stockholders of said corporation. He is not an officer of the United States, being but an agent of the plaintiff bank.

VII.

That J. T. Harrell, Trustee, is such trustee pursuant to the action of the stockholders and directors of the plaintiff bank whereby in 1933 there was placed in his possession as such trustee all of the assets of such corporation, and who now has in his constructive possession all of the assets thereof.

VIII.

That W. H. Peckham, administrator of the estate of G. W. Peckham, deceased, and Robert Peckham are each citi-

zens of the state of Texas, and that Hazel D. Peckham, William Peckham and George Peckham, the remaining heirs of G. W. Peckham, deceased, are resident citizens of the state of Colorado. That the Texas Investment Company, a dissolved corporation, was and is a citizen of the state of Texas.

IX.

That all parties to the controversy herein set out are citizens of the state of Texas, except Hazel D. Peckham, William Peckham, and George Peckham, who
208 are citizens of the state of Colorado, and the rights of the parties with respect to the matters herein pleaded, are determinable by the application of the law of the state of Texas, particularly such law so established as the law of the case by the Supreme Court of Texas in that this suit was originally filed in the District Court of Wichita County, Texas, by Cross Complainants against the plaintiff bank, and the matters litigated therein through the decision by the Supreme Court of Texas, as reflected by such Court's mandate on file among the papers in this cause, to which reference is made for all purposes.

X.

That upon G. W. Peckham's becoming trustee of Wichita Royalty Company, he did business with the plaintiff bank as an individual and as trustee, carrying a deposit and liability account of his own as well as a deposit and liability account in the name of Wichita Royalty Company.

XI.

That the amount of trust monies deposited by Cross Complainants with plaintiff bank exceeds by $200.000.00 the monies withdrawn therefrom upon authority of

Wichita Royalty Company and prayer is made that said deposit balance of said $200,000.00 be fixed and determined as said bank's deposit liability to Wichita Royalty Company.

XII.

That at all times the plaintiff bank, its officers, agents and employees, knew each and every fact herein elsewhere pleaded, and were charged by law with knowledge thereof upon and under such facts so averred.

XIII.

The declaration of trust creating Wichita Royalty Company and which in and of itself was and is the charter of the Trustee's power, gives to the trustee there-
209 under general authority but to carry out the purposes of the trust, shown by the articles of agreement to be solely and only the purchase and sale of oil and gas royalties and other oil and gas properties. It is therein provided that the title to all property acquired or to be acquired from time to time by the trust and all investments thereof should be made and held in the name of the trustee as such, and that the trustee shall hold all of the funds and property of the trust as trustee with the powers and subject to the limitations declared in the declaration shown to limit the powers of the trustee to dealing in oil and gas business.

XIV.

During G. W. Peckham's trusteeship he was likewise extensively engaged in private business. During said period of time said trustee used trust funds for non-trust purposes, for his personal benefit and individual profit, commingling trust funds with his own, seeking to destroy, and did destroy evidence of the trust's title to property

in violation of the express inhibition of the declaration of trust, colluded with the bank and its officers to accomplish the misappropriations hereinelsewhere set out, made payments to such parties upon his private debts with trust funds, known to be by the payee a payment of a private debt out of trust funds, traded and trafficked with himself as an individual and himself as trustee, and in such dual dealings profited personally therefrom with participation therein by the bank with notice of the trustee's breaches of trust, caused records transfers of trust funds to be made from the trust account to his personal account without any consideration moving to the trust therefor, the bank and its active officers knowing and participating therein and the peculations of the trustee being accomplished through the facilities of the bank and its active participation in breaches of trust
210 by G. W. Peckham, whereby and because of which said trustee and said plaintiff bank, from time to time, caused the bank's books to reflect transfers of monies from the trust account to G. W. Peckham's personal account and payments made therefrom to the bank, to its officials, and to third parties, no account having been made thereof between the parties hereto, but as a result of an accounting thereof the trustee's misappropriations will be shown to have been $200,000.00 and that such misappropriations were accomplished through the facilities and with the active participation therein by plaintiff bank, its officers, agents and employees.

XV.

All checks drawn by said trustee against the trust account were upon voucher form. One check is here now reproduced as an example of all. That which is underscored was written into the printed form of the check:

Remittance Advice.

Attached hereto is our check in full settlement of the items listed below. If not correct please return with explanation.

WICHITA ROYALTY COMPANY.

Description	Detail	Total
Notes Payable:		
To apply on note held by City National Bank		*$1,500.00*

Detach here before depositing check.

..... (Perforation) .....

Wichita Royalty Company,
Wichita Falls, Texas.

August 16, 1927. *No. 535.*

When Properly Indorsed Pay to the Order of *City National Bank* $1,500.00, *Exactly One Thousand Five Hundred Dollars No Cents.*

WICHITA ROYALTY COMPANY.
By *G. W. PECKHAM*, Trustee.

To The City National Bank,
Wichita Falls, Texas.

On the back of checks as and when presented and above the place of usual indorsement were printed these words:

"Indorsement hereon by the payee constitutes acknowledgment of full payment of the items listed on accompanying remittance statement. No other receipt is required."

XVI.

These checks were deposited by the bank to the personal account of the drawing trustee, and a corresponding charge made against the trust deposit, the bank well

knowing that the fund was a trust fund and was being improperly diverted from the trust account to the personal account of the trustee of such fund by being deposited to the credit of an account which the bank knew G. W. Peckham was using solely for personal purposes.

XVII.

There now follows a partial list of checks drawn upon the trust deposit with the plaintiff bank, wherein is given the check number, the date, the amount, the payee, to whom credit was given, and voucher notation, each item being charged to have been an accomplished misappropriation of trust funds by the trustee through the facilities and upon the active participation of plaintiff bank, to-wit:

Check No.	Date	Amount	Payee	Credit Given	Voucher Notation
427	10- 8-25	$ 5,500.00	Bank	Peckham	Purchase royalties
451	12-28-25	1,250.00	Bank	Peckham	Producing royalties
452	1- 4-25	5,000.00	Peckham	Peckham	Producing royalties
458	1-11-26	5,000.00	Bank	Peckham	Producing royalties
461	3- 6-26	15,769.07	Bank	Peckham	Stephens Royalty
478	3- 6-26	17,623.70	Bank	Peckham	Marlborough Purchase
479	3- 6-26	6,000.00	Security	Peckham	Marlborough Purchase
485	3-31-26	7,500.00	Bank	Peckham	Marlborough Imp'mnt.
495	3-23-26	300.00	Bank	Note	Interest to Bank
503	5-20-26	3,000.00	Peckham	Peckham	Marlborough Imp'mnt.
506	5-29-26	500.00	Bank	Note	Interest to Bank
507	5-29-26	1,500.00	Bank	Peckham	Marlborough Imp'mnt.
510	6-16-26	4,500.00	Bank	Peckham	Marlborough Imp'mnt.
519	7-13-26	1,000.00	Bank	Peckham	Marlborough Imp'mnt.
521	7-16-26	300.00	Bank	Note	Interest to Bank
525	8- 2-26	4,000.00	Bank	Peckham	Highland Ir. Co. Note
531	8-27-26	500.00	Bank	Note	Interest to Bank
532	8-27-26	4,357.58	Bank	Peckham	Highland Ir. Co. Note
540	10-13-26	300.00	Bank	Note P	Interest to Bank
550	11-20-26	7,500.00	Bank	Peckham	Purchase royalties
554	12- 2-26	1,500.00	Bank	Peckham	Royalties and fee

556	12-26-26	700.00	Peckham	Highland	Highland Ir. Co. Note
556-A	12-22-26	538.16	Peckham	Highland	Highland Ir. Co. Note
557	12- 7-26	1,920.00	Bank	Draft	Purchase royalties
569	1-11-27	300.00	Bank	Note	Interest to Bank
571	1-19-27	2,000.00	Bank	Peckham	Marlborough Imp'mnt.
579	2-19-27	2,500.00	Bank	Peckham	Marlborough Imp'mnt.
582	3- 1-27	500.00	Bank	Peckham	Interest to Bank
583	3- 1-27	301.82	Bank	Peckham	Purchase royalties
584	3- 1-27	500.00	Bank	Note	Interest to Bank
591	3-23-27	2,000.00	Bank	Peckham	Purchase royalties
599	4-14-27	300.00	Bank	Note	Interest to Bank
615	6- 8-27	500.00	Bank	Note	Interest to Bank
620	6-18-27	1,200.00	Bank	Peckham	Note to Bank
628	7-16-27	1,500.00	Bank	Note	Interest to Bank
635	8-16-27	1,500.00	Bank	Peckham	Note to Bank
650	10-14-27	2,400.00	Bank	Peckham	Note to Bank
657	11-25-27	1,800.00	Bank	Peckham	Interest to Bank
682	1-18-28	2,000.00	Bank	Note	Note to Bank
710	4-20-28	1,850.00	Bank	Peckham	Note to Bank
717	5-17-28	220.00	Bank	Note	Interest to Bank
721	6- 1-28	424.66	Bank	Note	Interest to Bank
733	7-23-28	220.00	Bank	Note	Interest to Bank
752	9-27-28	424.66	Bank	Note	Interest to Bank

Check No.	Date	Amount	Payee	Credit Given	Voucher Notation
768	12- 4-28	2,000.00	Bank	Note	Note to Bank
791	2-19-29	1,500.00	Bank	Note	Note to Bank
814	6- 7-29	1,500.00	Bank	Note	Note to Bank
824	7-15-29	212.49	Bank	Note	Interest to Bank
836	8-30-29	1,000.00	Bank	Note	Note to Bank
856	11-23-29	1,500.00	Bank	Note	Note to Bank
880	1-24-30	1,500.00	Marlborough	Tex. Inv. Co.	Loan
890	2-24-30	1,000.00	Bank	Note	Note to Bank
898	4-10-30	1,000.00	Bank	Note	Note to Bank
908	5-13-30	500.00	Tex. Inv. Co.	Tex. Inv. Co.	Marlborough Note
920	6-14-30	1,500.00	Bank	Note	Note to Bank
930	7-14-30	3,055.42	Bank	Note	Note to Bank
Total		$144,767.56			

XVIII.

Additional to the above, and as a further misappropriation, the Trustee, Peckham, sold two properties belonging to the trust and received therefor the aggregate of $12,048.00, $6,000.00 thereof being evidenced by cashier's check and deposited to the personal account in the plaintiff bank, of G. W. Peckham and by him used for his own personal benefit. The remaining $6,048.00 was
213 paid by the purchaser of the trust property under escrow contract between Wichita Royalty Company and the purchaser, deposited in the plaintiff bank as escrow agent, with executed conveyance to be surrendered to the purchaser upon the payment of $6,000.00 and interest, as evidenced in writing deposited with the plaintiff bank. The purchaser paid into the escrow the total of $6,048.00 by checks payable to the plaintiff bank, which the bank, well knowing the money to be trust money, deposited to the personal account of G. W. Peckham and which was by him misappropriated.

XIX.

During the period of time covered by the transactions above, the bank received from G. W. Peckham upon his personal indebtedness to it $57,764.21, said payments being made to the bank from the personal account of G. W. Peckham with the Bank to which the above funds had been credited, and but for the credit of which trust funds such payments could not all have been made, and at the very outset of the series of misappropriations, the defaulting trustee diverted trust funds from Wichita Royalty Company's account to his individual account so that he could, as he did, pay therefrom the bank upon his individual debt.

XX.

The perforation on each check, and the notation on the back thereof advised the bank that the check as and when presented was a voucher check and that attached thereto

when issued was a voucher upon which was written the purpose thereof, and the bank was thus referred to matters of writing wherefrom it affirmatively appeared that each of the several checks now declared upon was issued for other than a trust purpose, but a purpose personal to the Trustee and involved a transaction wherein the trustee was personally interested and in the con-
214 summation of which there was a breach of trust facilitated through the bank's charging the trust deposit and crediting the trustee's personal account.

XXI.

Each of the charges against the trust deposits and credits to the personal account of the drawing trustee was made at a time when the personal account of the trustee had been all but exhausted and he was indebted in large amounts to the plaintiff bank.

XXII.

The plaintiff bank's chief executive officer, J. T. Harrell, was during the period of these several transactions an active officer of plaintiff bank. He negotiated with G. W. Peckham certain loans hereinafter described; a substantially large part of his loans were first deposited to the trust account and therefrom diverted to the personal account of the drawing trustee so that such trustee, as an individual, might, as he did, pay to the loaning banker upon Peckham's personal debt, and so that the loaning banker might, as he did, pay therewith the bank upon his private debt, and so that the bank might, as it did, receive therefrom a portion of the proceeds of such loan upon the private debt of W. H. Peckham, and upon the debt of G. W. Peckham.

XXIII.

On January 1, 1926, G. W. Peckham and J. T. Harrell were business associates and good friends. The former

was trustee of the Wichita Royalty Company, and the latter was the chief active officer of the plaintiff bank: These men were partners in a large suburban venture, and joint owners of land known as the Curlee tract; likewise they owned an undivided interest in a producing property known as the Stephens Royalty, G. W. Peckham having acquired his interest November 3, 1925,
215 from J. T. Harrell and another bank officer, said J. T. Harrell owing the bank at that time $7,500.00 which indebtedness was increased on January 11, to $10,560.00, and again increased on January 18th to $15,574.44. G. W. Peckham owed the bank $28,050.00. He owed J. T. Harrell and an associate banker $5000.00, and interest, upon notes executed November 3, 1925. J. T. Harrell and G. W. Peckham were jointly and severally liable to Highland Irrigation Company upon vendor's lien notes for the purchase of the Marlborough partnership property, totaling $51,895.00 with interest. J. T. Harrell was G. W. Peckham's personal banker and the latter would have told the former any matter of thing with respect to his business that the former should have asked. It was the custom and practice of the banks and bankers generally and of the plaintiff bank in particular, to inquire as to the intended purpose for which the proceeds of a $15,000.00 to $25,000.00 loan would be used when an application therefor was made. Wichita Royalty Company was free of debt except current items. It owned valuable properties. It was not indebted to the bank.

XXIV.

In such a setting J. T. Harrell and G. W. Peckham negotiated the sale by J. T. Harrell and another of the bank's officers, of their remaining interest in the Stephens Royalty, whereby Wichita Royalty Company obtained the legal title to said interests and the agreed consideration being $20,000.00 plus G. W. Peckham's personal interest in the Curlee land, then of the agreed and reasonable value of $2,407.00.

XXV.

G. W. Peckham's personal balance at the beginning of business January 4th was $878.70. That day
216 he caused Trust check No. 452 to be drawn on the bank payable to his individual order for $5,000.00 which he that day deposited to his personal account. The next day he paid Highland Irrigation Company $812.00 upon the joint obligation of J. T. Harrell and G. W. Peckham, the check being drawn on the commingled account. From January 6th to January 11th, G. W. Peckham's commingled account consisted wholly of trust funds, and on January 11th he caused Trust check No. 458 to issue, drawn on and payable to the bank's order in the sum of $5,000.00 which he deposited to his private account and against which, and on the same day, he issued his check for $2,567.75 as his part of the joint purchase with J. T. Harrell and C. E. Basham of the Curlee land.

XXVI.

The next day, January 12th, at a time when G. W. Peckham's commingled account consisted wholly of trust funds, he issued his check to Highland Irrigation Company for $454.50 in payment on the joint obligation of J. T. Harrell and G. W. Peckham in their Marlborough partnership venture.

XXVII.

The fourth day thereafter, January 16th, Wichita Royalty Company's liability record with the bank was charged with $15,300.00, although the Trust did not get credit for the proceeds of such loan until January 18th.

XXVIII.

On January 16th, G. W. Peckham issued his check to J. T. Harrell and C. E. Basham for $2,201.32, drawn on

the commingled account, $1,362.87 of which consisted of funds theretofore transferred from the trust account.

XXIX.

The second day thereafter, January 18th, the day the trust received credit in its deposit account for
217 the $15,000.00 loan, G. W. Peckham caused Trust Check No. 461 for $15,769.07 to issue, payable to the bank's order and deposited in G. W. Peckham's personal account, noting for the first time in the records of the Royalty Company that such check, together with Checks Nos. 452 and 458 were in payment for an interest in the Stephens Royalty. G. W. Peckham's personal balance at the close of business January 18th of $18,765.87 was constituted wholly of funds transferred from the trust account.

XXX.

Thereafter, and before another deposit to his personal account, and when the account still was constituted wholly of transferred funds, G. W. Peckham on January 25th, issued his check to J. T. Harrell and C. E. Basham for $10,028.00 which check was that day charged against G. W. Peckham's commingled account. Half of the checks, or $5,014.00, was deposited to J. T. Harrell's account (personal) with the bank, at a time when on January 25th his personal account was $219.16, and his personal liability to the bank was $15,574.44. That same day, and with $4,827.71 of the funds transferred from the trust account to G. W. Peckham's account and then to J. T. Harrell's account, the banker who negotiated the January 16th loan from which the proceeds were derived, paid the bank upon his private debt the sum of $5,006.67, leaving his personal balance at the close of business January 25th, $186.29.

XXXI.

Three days later, January 28th, J. T. Harrell and C. E. Basham acknowledged deed of conveyance to Wichita Royalty Company, and the receipt of the consideration therefor which consideration J. T. Harrell testified was $20,000.00 plus G. W. Peckham's personal interest in the Curlee land, which J. T. Harrell testified was $2,407.00.

218 XXXII.

The effect of the above is this: J. T. Harrell, as an individual, sold a valuable property; as a banker, he loaned G. W. Peckham the money with which it was bought, the loan being made upon the credit of the royalty company, to which company the deed ran. G. W. Peckham, as an individual, disposed of his interest in the Curlee land for $2,407.00, paid and obligated himself to pay and later paid $20,000.00 in cash, and as trustee, G. W. Peckham charged his trust $25,769.07 for the property and made a private gain of $3,362.07. Then too, G. W. Peckham paid J. T. Harrell and C. E. Basham $10,028.00, which J. T. Harrell testified was G. W. Peckham's personal debt, and from J. T. Harrell's one-half thereof, deposited in the bank, J. T. Harrell paid the bank upon his private debt.

XXXIII.

On February 2nd, 1926, Trust Check No. 465 was deposited to G. W. Peckham's personal account for $400.00, on which day and against the commingled account, G. W. Peckham drew his check for $5,100.00 payable to J. T. Harrell and C. E. Basham, $2,550.00 being deposited in the bank to the account of each payee. Of the $5,100.00 so paid, the bank's officers, $3,074.15 was of the proceeds of monies transferred from the royalty account to G. W. Peckham's personal account. On February 13th, G. W. Peckham's personal liability to the bank was credited

with $550.00, and his commingled account charged therewith upon his personal check drawn thereon.

XXXIV.

On February 27, $400.00 was transferred from the Trust account to G. W. Peckham's personal account, and, on the same day, G. W. Peckham drew a check against the commingled account payable to the bank's order for $21,000.00. On the same day, J. T. Harrell paid the bank upon his personal indebtedness $10,000.00, but without additional records, we are unable to say what, if any, connection there is between these transactions.

219

XXXV.

On March 1, 1926, G. W. Peckham owed the Bank $28,050.00 plus interest. His personal balance that morning was $341.90. J. T. Harrell then owed the bank $7,060.00. G. W. Peckham and J. T. Harrell were still jointly obligated upon the Marlborough indebtedness, in excess of $50,000.00. W. H. Peckham then owed the bank $6,120.00 and he was liable with J. T. Harrell and G. W. Peckham upon the Marlborough indebtedness.

XXXVI.

That day, March 1st, G. W. Peckham and J. T. Harrell concluded negotiations for a $25,000.00 loan, whereby the trust's note therefor was executed and its liability account charged with $25,500.00 additional, and its deposit account credited with $25,000.00. On the same day, March 1st, G. W. Peckham issued his check drawn on the commingled account payable to W. H. Peckham for $11,811.85 in payment to W. H. Peckham for his interest in Marlborough addition. On March 1st, G. W. Peckham's personal balance was $341.90 and his balance was insuf-

ficient to pay W. H. Peckham's $11,811.85 check until March 6th, on which day W. H. Peckham's personal balance of $225.20 consisted wholly of transferred funds itself, was increased $17,623.70 upon Trust Check No. 478 drawn on and payable to the bank's order, charged against the Trust fund, and deposited to the trustee's private account, the trustee causing the records to show the sale to his trust of one-half interest in the Marlborough partnership. That same day, March 6th, G. W. Peckham drew his check against the commingled account, consisting wholly of transferred funds, for $5,060.00 payable to the order of J. T. Harrell and C. E. Basham, one half of which was deposited to J. T. Harrell's account and the other half to C. E. Basham's account in the bank. On March 9th, W. H. Peckham's $11,811.85 check cleared and same was added to his then deposit balance with the bank of $518.52, and on the same day W. H. Peckham paid to the bank his entire indebtedness of $6,120.00 of all of which was paid with the proceeds of transferred funds except his beginning balance of $518.52.

220

XXXVII.

Cross-complainants would show that G. W. Peckham was without authority to transfer any funds from the Trust account to his personal account and thus destroy the evidence of title to trust property required by the declaration of trust to be held separate and distinct from his personal property and that said trustee was wholly without power or authority to convey to or obligate the trust upon the debts of Marlborough addition and the trust received no benefit of any kind or character for the proceeds of those checks shown to have been applied for the purchase or improvement of the Marlborough addition, and if it be held that the bank's charge against the deposited account therewith depleted the deposit, then the bank is liable for their misappropriation.

XXXVIII.

The misappropriations were accomplished through the facilities of the bank and the active participation of its officers and agents upon checks for the most part made payable to the bank's order which checks were charged against the trust deposited account, credited to the personal account of the trustee, and therefrom by him diverted to purposes other than those of the trust, some to pay officers of the bank, some to pay the bank itself upon the personal indebtedness of the trustee, some to pay the bank the indebtedness due it by third parties,
221 some to pay into and some for the debts of the Marlborough partnership, and some to pay the personal obligations of the trustee.

XXXIX.

The trustee caused the trust books to reflect that many of such checks were issued for the purpose of the trust's acquiring royalties, but the trust books did not reflect that such royalties as were so acquired were transferred from the trustee as an individual to his trust, or from others to the trust, in which the trustee was personally interested, and from which transactions the trustee personally profited.

XL.

During his trusteeship G. W. Peckham was extensively engaged in the purchase and sale of oil properties as an individual, and in his own right. He would generally buy properties near development in the vicinity of a drilling well, and at a time and under circumstances when the value of properties in the locality was of a highly speculative and fluctuating value. These properties he would buy with his own money, and take title thereto in his own name, and during the period of the fluctuating value

and at a time when it appeared that the interest so bought was of little or no value, sometimes when the property had been condemned, he would thereupon execute an assignment of conveyance from himself as an individual to his trust at a consideration fixed by himself, sometimes for the exact amount of money that he paid for the interest, and sometimes at a price whereby he would personally profit, but at no time did he have the prior consent or subsequent approval of those whose monies and properties he held in trust, and for whom he was a trusted fiduciary.

XLI.

Some of the properties which G. W. Peckham caused the trust books to show it had received for checks
222 so issued were not in fact received by the trust and checks totalling $8,000.00 were issued and cleared and entered upon the trust books as the purchase price of properties but which properties the trust never received.

XLII.

Every sale by the trustee as an individual to himself as trustee was without the prior consent or subsequent knowledge of those from whom G. W. Peckham was acting in a fiduciary capacity, all of the facts being concealed during G. W. Peckham's life and by the subsequent trustee until the original filing of this suit in 1931, whereupon the dual dealings of G. W. Peckham as trustee were repudiated and the trust elected not to be bound thereby and sued thereupon, retaining such properties of some value under an asserted lien thereon to secure the trust in payment of the trustee's misappropriations.

XLIII.

Among the properties conveyed, or supposed to have been conveyed to the trust by G. L. Peckham, as an in-

dividual for a price fixed and determined by himself, and for his own best interests, and which cross-complainants repudiated as nullities, and with respect to which tenders and offers to do equity, are the following, to-wit:

(a) The East 30 acres of a 71 acre tract of the Mulligan Survey, Callahan County, Texas, more particularly described in a deed recorded in Vol. 103 at page 150 of the Deed Records of said County.

(b) 1070 acres known as the Porter Ranch in Archer County, Texas.

(c) Marlborough Addition to the City of Wichita Falls, Texas, and/or its corporate successor, the Texas Investment Company.

(d) East ½ of Lot 10, North Anderson Ranch, Archer County, Texas.

223 (e) Southwest 60 acres of the E. Polk Land, Abstract 717, William Polk Preemption Survey, Archer County, Texas.

(f) The East one-half (E-½) and the Southeast one-quarter of the Southwest one-quarter of Section 35, Township 19 North Range 21 West, Ellis County, Oklahoma.

In this connection Cross-complainants say that none of said properties above mentioned were ever productive of minerals and each of said properties was wholly valueless at the time of the death of G. W. Peckham, and has been continuously since such time, and the substitute trustee had and has but one election under the law and his duties as trustee, which duty he has pursued, namely to repudiate all of the transactions with respect to such properties and to tender the same and to offer to do such equities as may be required, asserting thereon an equit-

able lien to secure Cross-complainants in the payment to them of the misappropriations by G. W. Peckham, deceased.

XLIV.

Soon after the death of G. W. Peckham in November, 1929, the substitute trustee, who theretofore had been the bookkeeper of the Trust, acting under the direction of G. W. Peckham, and having but ministerial duties, and being the owner of no certificate of stock in the Trust during the period of time that G. W. Peckham was misappropriating the funds, became by appointment of Court the substitute Trustee, and W. H. Peckham became the administrator of G. W. Peckham's estate. These two for a period of time after the death of G. W. Peckham carried out a series of negotiations looking to the satisfactory adjustment of all these matters of defalcation by the former trustee, so that it would not come out and be generally known and the fraud of the deceased Trustee would be concealed. The substitute trustee finding that
224 the bank had not applied certain checks upon the trust's note to the bank, and further finding additional discrepancies so that the total considered by him to be a discrepancy was $19,826.67, being the aggregate amount of the checks which were shown by the books to have been applied and the sale price by the trust of two royalties shown on the books during G. W. Peckham's lifetime, to have been accounts receivable by the Trust, but which the substitute Trustee found G. W. Peckham had personally collected and retained. This discrepancy was called to the administrator's attention and the bank agreed to back Scannell up in the thing and it was agreed that the matter be concealed, the stockholders not being notified and the public not advised with a view to repaying the then considered defalcation out of the proceeds of a life insurance policy of more than $100,000.00.

XLV.

The substitute Trustee told an attorney that there was this $19,826.67 discrepancy and obtained the services of such attorney to prepare a proof of such claim to be filed with the administrator, but said substitute trustee did not tell said attorney any of the other facts herein elsewhere pleaded, and did not ask advice concerning the rights of the stockholders, nor the Trustee's duties as substitute Trustee with respect to all of the facts herein pleaded, but simply requested said attorney to prepare a claim to be filed for, and covering specified items totaling as above shown. Said account was filed at a time when it was agreed by and between the substitute Trustee and the administrator of G. W. Peckham's estate that the fraud of G. W. Peckham's would be concealed so that it would not become generally known, and the existence of the $100,000.00 life insurance money and the administrator's promise to endeavor to work payment of the discrepancies out of such life insurance money, and other facts herein elsewhere pleaded, lulled the substitute Trustee into inactivity, and he actively joined in a
225 continuation of the concealment of the former Trustee's fraud. He did not know what his rights were and assumed and believed that G. W. Peckham had the right to deal between himself individually and himself as a trustee without authority from. or notice to his stockholders. He further believed that he had no alternative as trustee but to accept the properties that G. W. Peckham had conveyed to his trust, nor did he know that he could do other than to claim Marlborough Addition and/or its stock equivalent in the Texas Investment Company. He was without counsel and without advice when, with J. T. Harrell and the bank's lawyer, a stockholder and directors meeting was called and he was elected President of Texas Investment Company, was issued as Trustee one-half of the capital stock of the corporation, which in the meeting he indorsed as collateral security to the note herein sued upon, and which note he also

indorsed as substitute Trustee. He subsequently renewed it some three or four times and paid thereon monies of the trust at a time when he was wholly oblivious to his rights and when he was joined in an effort to further conceal the facts from the stockholders.

XLVI.

Finally when the bank had gotten him to renew several times the 1926 notes and the Texas Investment Company notes, had gotten him to accept stock in Marlborough Addition, and had written up the minutes under the direction of counsel for the bank, and when the Trust had been tied in every possible way that under the circumstances it could be tied without disclosing to the stockholders what had transpired, the bank filed suit to collect the notes, first selling under the pledge all of the capital stock of Texas Investment Company to the bank and here suing for a deficiency existing after applying against the notes the bid of the bank.

226 XLVII.

The bank then sued out an application for the appointment of a receiver and persuaded a district Judge improvidently to appoint such receiver, and which receiver took from the possession of said substitute Trustee all of the books and records of the company and the possession of all of the assets of the company.

XLVIII.

It was at this time that the substitute Trustee for the first time sought advice to determine what rights, if any, the stockholders had, and what duties if any, he owed the stockholders in protecting them against the former frauds of his deceased friend. It was then for the first

time that Scannell disclosed to any attorney the facts and circumstances herein elsewhere pleaded. Thereupon, and without delay, the substitute trustee answered the bank's suit, pleading want of consideration and non est factum to the obligation declared upon by the bank, pleaded the facts herein pleaded in cross action against the bank, and advised by letter the stockholders of what had transpired and what action he had taken, the stockholders by letters commending his action in bring the suit.

XLIX.

The checks above specifically pleaded as having been wrongfully charged against the Trust deposit and credited to the private account of the Trustee through the facilities of the bank and its active participation in the fraud, as well as items pleaded above as having been so diverted between the date G. W. Peckham qualified as Trustee and October 8, 1925, were wholly inoperative to lessen the Trust's deposit balance with the bank, each transaction being wholly without authority, and no demand and refusal to pay such monies by the bank so deposited has ever heretofore been made as to items occurring prior to October 8, 1925, and no demand for items subsequently occurring was made either during G. W. Peckham's lifetime, nor during the period of concealment by the substitute trustee, nor prior to the filing of the original cross action herein. Thus Cross-complainants now charge that $200,000.00 of Trust funds were deposited in plaintiff bank, and no authorized demand and payment thereof has ever been made and the plaintiff bank is justly indebted to Cross-complainants as their deposit balance, in the sum of $200,000.00. This suit, then, is brought, as well for the recovery of said deposit balance as for the bank's active participation with G. W. Peckham in breaches of trust.

227

L.

Cross complainants say that not a single stockholder of Wichita Royalty Company, other than the Trustee, ever knew, prior to the institution of this suit, of any of the facts herein pleaded; that such facts were concealed from them; that such facts were well known to the bank, its officers, agents, and employees; that the facts were themselves self-concealing; that the bank knew the monies deposited to Wichita Royalty Company's account were trust funds and that G. W. Peckham was but the Trustee thereof, representing parties beneficially interested and in the fiduciary capacity. The bank further knew that the trustee had no right to use trust funds for personal purposes. The bank knew that G. W. Peckham had a personal account in the bank, a deposit checking account and also a note or liability account. It knew that G. W. Peckham over a long period of time and in a series of transactions, all having the same character and involving the same element or plan was transferring large sums of money from the trust account to his personal account and usually at times when his personal account was in need of additional funds. The bank actively and knowingly aided him in making the transfer. Most of the checks were made payable to the bank's order. The bank knew the Trustee was commingling trust funds with his personal funds, and knew that it was actively assisting him in doing so. It knew that Peckham was
228 drawing checks on his personal account for personal purposes, an account which it knew was commingled funds. It further knew that every payment made from the commingled account for personal purposes would amount to a wrongful conversion of trust funds. It knew that G. W. Peckham was indebted to it in large sums of money and that he was making payment on this debt from time to time, to the bank by drawing checks on his personal account, which it knew was commingled funds of personal funds and trust funds. It knew that he was using trust funds to pay a private debt. It knew that G.

W. Peckham's personal credit rating would be increased by its participation with the Trustee in transferring trust funds to G. W. Peckham's personal balance, which was relatively small, monies which the bank knew he did not own. The bank aided him in making these transfers and then accepted his checks in payment of his personal debt to the bank.

LI.

Cross complainants further state that at the very beginning of his trusteeship, G. W. Peckham was so derelict in the discharge of his duties as trustee as that he forfeited any right to compensation in any amount in that he failed to use ordinary care in his administration, was guilty of gross negligence, repudiated the trust and claimed the property as his own, misappropriated trust funds, failed to keep proper record, of trust administration, failed to account, filed inaccurate and false account, made illegal investments, failed to invest trust property, mingled trust property with his own, was guilty of conduct warranting removal, was guilty of disloyalty to the cestuis in that he acted for his own selfish interests and failed to protect the trust's property. Of trust funds deposited to the account of and belonging to the Wichita Royalty Company, G. W. Peckham transferred approximately $30,000.00 thereof to his private account, causing the books to show that
229 such aggregate sum was made up of monthly payments of four or five hundred dollars each month as a salary, and while if the trust had been administered by him faithfully, he would, in an accounting, have been entitled to reasonable compensation, yet by reason of the way and manner in which he did administer the Trust, he is, in accounting entitled to no salary, and the plaintiff bank, having received a portion of such trust funds in payment of G. W. Peckham's personal debt, and having received other and different funds in such payment and having had actual knowledge and constructive notice of G. W. Peckham's lack of fidelity and of his

agency's having determined, there was no authority for the salary checks to be drawn, for the transfers to be made, and for the trust to be charged therewith, the receipt of such monies being a misappropriation by the trustee through the facilities and with the active participation by the plaintiff bank.

LII.

Upon his becoming trustee, G. W. Peckham immediately began to commingle trust funds with his own and to pay therefrom and therewith his personal debts to the bank at a time and under circumstances when his account was such as that the payments to the bank were of trust funds and the bank knew in the spring of 1923, that G. W. Peckham was paying his personal debts with trust funds, and they knew then and thereafter that G. W. Peckham was dishonest, that he was unfaithful to his trust, that he was using the facilities of the bank to accomplish misappropriations of trust funds, that he was transferring funds from the trust account to his own personal account upon checks payable to the bank's order and for the purpose of privately using such funds, that he was destroying the evidence of the trust's title to its property in violation of the inhibition placed on the trustee by the declaration of trust, that he was
230 acting in a dual capacity and personally profiting therefrom, but, notwithstanding such knowledge, the bank permitted the continued commingling of the funds and the disbursement thereof for non-trust purposes to such an extent that G. W. Peckham was permitted to accomplish the misappropriation of trust funds in the amount of $200,000.00 with the active participation in such breaches of trust by the plaintiff bank, its officers and agents.

LIII.

G. W. Peckham was insolvent at the time of his death and every dollar of his assets were received through the

administration of his estate by the bank under liens and such properties as the trustee conveyed to the trust and which have been retained by Cross-complainants have been retained, not in affirmance of the conveyance to it, but under an asserted lien as security for the debt due by G. W. Peckham's estate by reason of his misappropriations.

LIV.

(1) By instrument dated February 12, 1923 and recorded in Volume 99, at page 544 of the Deed Records of Young County, Texas, G. W. Peckham, for $8,000.00, acquired an undivided one-fourth interest in and to the minerals of the BRIR No. 39 J. E. Dowdle Survey, Abstract 2215, Young County, Texas, containing 160 acres.

(2) Said mineral estate was acquired at a time when its value was fluctuating, it being in the vicinity of active development.

(3) Thereafter G. W. Peckham executed a conveyance to Wichita Royalty Company of an undivided 3/16 mineral interest in said 160 acres of land, acknowledging the same on April 25, 1923, and causing same to be filed May 18, 1923, and recorded in Volume 99, page 555 of the deed records of Young County, Texas.

231 (4) Said trustee caused trust books to show the consideration for such assigned interest to be $7,500.00, but such books did not show the personal interest of G. W. Peckham therein. The trustee, as an individual, charged himself as trustee with interest upon deferred payments, the original payment being Wichita Royalty Company check No. 1253 dated March 10, 1923, payable to the order of the City National Bank of Wichita Falls, Texas, for $2,500.00, the second payment being by check 1291 dated April 9th, 1923, payable to the order of G. W. Peckham in the amount of $2,516.67, and the third

payment being by check No. 1325 dated May 11, 1923, payable to the order of G. W. Peckham in the amount of $2,533.33, all of such checks being drawn on the trust's deposit with plaintiff bank, charged against such deposit account, the last two items credited to the personal account of G. W. Peckham and the first being credited to the account of B. L. Fain.

(5) On May 12, 1923, by instrument recorded in Volume 99, page 587, of the deed records of Young County, Texas, G. W. Peckham conveyed to Perpetual Royalty Syndicate, F. O. Harrell, Trustee, an undivided 1/16th interest in and to the minerals in said above described 160 acres, receiving therefor from Perpetual Royalty Syndicate $2,500.00.

(6) The $2,516.67 transfer of funds from the trust account to the trustee's personal account was accomplished April 10, 1923, at a time when G. W. Peckham's then balance was $866.25 and the bank then knew that G. W. Peckham's personal account consisted of commingled funds.

(7) Thereafter and on May 11, 1923, at a time when $302.10 of the $2,516.67 deposit remained in the commingled account a second check for $2,533.33 was
232 deposited to G. W. Peckham's personal account and charged against the trust's deposit making the account contain $2,836.43.

(8) Thereafter, and on June 22, 1923, when the commingled account consisted of $428.85 of the $2,533.33 deposited and $2,683.34 of his personal funds, G. W. Peckham paid the plaintiff bank $3,050.60 upon his personal indebtedness to the bank, of which payment the bank knew, and was charged by law with notice, that $390.86 of the payment so made to the bank upon the personal indebtedness of G. W. Peckham was money belonging to the Wichita Royalty Company transferred to and com-

mingled with G. W. Peckham's private funds, from and after which time the bank knew that G. W. Peckham was unfaithful to his trust and was using its money to pay his private debts, and from which time the bank no longer had the right, if any it had theretofore, to permit the transfer of trust funds to the personal account of G. W. Peckham.

(9) Having personally dealt with the subject matter of his trust in profit to himself in the purchase and sale of the above described interest, the trustee forfeited any right to compensation, and throughout his subsequent tenure of office he continued personally to deal with the subject matter of his trust using its funds, destroying evidences of the trust's title to property, profited in trades made in his dual capacity, paying his private debts to the bank and to its officers with monies thus obtained from the trust, whereby he was and is entitled to no compensation and the bank had no right to permit the transfer of funds evidenced by monthly checks entered by him as salary, the proceeds of which not being used for any authorized trust purpose.

(10) The mineral interest above described as having been conveyed to Wichita Royalty Company produced oil in paying quantities Wichita Royalty Company receiving monthly payment totalling $8,591.76.

233 (11) Cross complainants say that the above facts (other than the execution of the conveyance by G. W. Peckham to his trust) were all unknown to the present trustee until discovered immediately before the filing of this pleading. It was not known that G. W. Peckham made a profit in the sale of his personally acquired interests, nor that he paid the bank a part of the proceeds of the checks which he caused to be drawn on the trust account and he did not know that the transaction was handled other than that the interest was paid for by the trust to the original fee owners.

(12) Possessed now with such information above alleged, Cross-complainants elect to rescind said transactions between the former trustee and the trust and elect not to be bound thereby and herenow tender an accounting of all funds received as the proceeds of the minerals accruing to this interest and ask that they recover and be given credit in accounting for the $7,550.00 with interest thereon as provided by law, with credit thereon of the value of the minerals accruing to said interest. In this connection, Cross-complainants make such tenders and offer to do such equities as in good conscious required, asserting that said property is being held under an equitable lien to secure Cross-complainants in payment of the mis-appropriations of the former trustee, which lien is now sought to be foreclosed, with offer to re-convey the same or to do any other thing required in equity to accomplish the repudiation of the dual dealings of the former trustee,

(13) Cross-complainants say that crediting the $7,550.00 and interest with the proceeds derived from the sale of minerals accruing to such interest and computing by monthly, yearly or other balances or figures, and computing interest upon debits and credits as the Court may direct in either oil, or any such methods, the trust would be entitled to a credit in accounting between that
234 which they paid, with interest, and that which they received thereon with interest, and the Court is invited to determine the method of such computation.

LV.

On February 29, 1924, G. W. Peckham caused trust check No. 169 for $1,200.00 to issue payable to his order and drawn on plaintiff bank, which check was charged against the trust's deposit with the bank and credited to G. W. Peckham's personal account with the bank. The trustee caused the trust books to show the $1,200.00 to be

in payment to him of a second hand Studebaker automobile which he sold to the company which he had theretofore purchased as his own with his own money, and thereafter continued to use in his private business until it was sold on September 30, 1926, with the trust receiving $555.00 from the sale, to which G. W. Peckham in accounting is entitled to credit, but he should be charged with $1,200.00, Cross-complainants repudiating said transaction. In this connection Cross-complainants say that the car had been disposed of long prior to the institution of this suit in 1931, and the present trustee was not and is not in possession to tender the same back, but asks that the transaction be avoided and the bank held liable upon the transfer of the $1,200.00 but with a $555.00 credit.

LVI.

(1) Cross-complainants would show that G. W. Peckham, as an individual, conveyed to himself as trustee, on April 22, 1924, a 1/64 mineral interest in Lots 13 and 14, Block 27, American Tribune New Colony's subdivision of Archer County, Texas, for a consideration paid to him of $27,500.00 which property G. W. Peckham, as trustee, sold during his lifetime and deposited the $6,000.00 proceeds of same to his personal credit with the plaintiff bank.

(2) $9,250.00 was paid by Trust check No. 185 drawn on the plaintiff bank, payable to G. W. Peckham's order charged against the trust deposit and credited to trustee's personal account on March 18, 1924.

235 (3) That day G. W. Peckham paid the plaintiff bank $10,026.75 in which payment the bank received $5,500.91 of trust funds upon the payment by G. W. Peckham of a note due the bank which was executed by W. H. Peckham as accommodation maker for G. W. Pickham, and in this connection it is shown that G. W.

Peckham borrowed from plaintiff through J. T. Harrell, $20,000.00 on March 7, 1924, which was deposited to G. W. Peckham's private account with said bank and a note for $10,000.00 executed by G. W. Peckham, whose credit would not stand the $20,000.00 loan at the time, and the other $10,000.00 was evidenced by note executed by W. H. Peckham, G. W. Peckham receiving the proceeds of the entire $20,000.00 loan, and repaying the same, one note on March 17, 1924, and the other March 18, 1924, both payments being out of commingled funds, and the latter payment to the extent of $5,500.91 being paid out of trust funds.

(4) In this connection, Cross-complainants say that Wichita Royalty Company received credit for the proceeds of some of the minerals produced from said property, which should be credited in accounting, the former trustee and the bank to be charged with that which the Royalty Company paid for the interest plus lawful interest thereon, and credited with such offsets as oils payments create.

LVII.

(1) G. W. Peckham, as an individual, sold to himself as trustee, Property 76, being H. H. White lease, Archer County, Texas, for $21,000.00, $11,000.00 of which trust fund so paid was deposited to G. W. Peckham's personal account on July 3, 1924, and therefrom expended by G. W. Peckham for non-trust purposes. The remaining $10,000.00 was deposited to G. W. Peckham's personal account in plaintiff bank July 25, 1924, which likewise was expended for non-trust purposes.

236 (2) G. W. Peckham, in his lifetime, as trustee, sold this property, receiving therefor $2,334.90. The trust received $2,925.90 as the proceeds of oil accruing to the interest. The bank should be charged with $21,000.00 and interest and credited with $2,334.90 as

of February 17, 1925, together with oil runs as and when paid, and an accounting be had to determine the amount thus determinable.

LVIII.

On November 3, 1924, G. W. Peckham's commingled account consisted of $762.77 of his money and $1,151.18 of the trust's money, a total of $1,913.95, against which account, plus a deposit that day made, and other checks issued against the same, G. W. Peckham paid $5,100.00 to the plaintiff bank upon his private debt, $128.48 of which payment was of trust funds.

LIX.

On May 5, 1925, G. W. Peckham caused trust check No. 373 for $2,500.00 to issue drawn on plaintiff bank against the trust account and deposited to the personal account of G. W. Peckham, to whose order the same was made, the consideration being the assignment of 1/16 royalty known as Property No. 79 from which the trust received $419.23 in oil runs and which property became valueless and abandoned by the operator prior to the institution of this suit. That said property is and has been valueless and there was no election for trustee to make concerning same, but same is tendered back with offers to do such equities as in good conscious required and the bank and G. W. Peckham should be charged with $2,500.00 in accounting and credited with $419.23 with interest computed upon the accounting as provided by law.

LX.

Of the $2,500.00 last mentioned, $2,453.17 remained in the commingled account at a time when on May
237 12, 1925, G. W. Peckham drew a check against the commingled account to the plaintiff bank's order

for $4,056.00 in payment of his private debt to the plaintiff bank, $1,386.92 of which payment was the trust's money.

LXI.

On June 11, 1925, G. W. Peckham's commingled account consisted wholly of trust funds at which time and from such trust funds G. W. Peckham paid to the plaintiff bank upon his private debt the sum of $66.67, being interest upon his note No. 61679.

LXII.

(1) In July, 1925, G. W. Peckham conveyed to the trust Property No. 80 for which the company paid him $11,000.00 upon checks drawn on the plaintiff bank payable to G. W. Peckham's order, the first check for $6,000.00 being deposited June 24, 1925, and $5,000.00 deposited June 29, 1925, the trust account being charged and G. W. Peckham's personal account being credited with said amount.

(2) This property produced and the trust fund received $10,174.51 in oil payments over a period of years.

(3) Cross-complainants elect to repudiate such transaction and make such tender and offer to do such equities as in conscious required, alleging that the bank and G. W. Peckham should be charged in accounting with $11,000.00 and interest accrued thereon and be credited with the oil payments as and when received with an equitable lien upon said property foreclosed as security for the debt due Cross Complainants, for which purpose Cross complainants hold said property.

LXIII.

On September 24, 1925, G. W. Peckham paid Highland Irrigation Company $3,869.25 as a member and for the ac-

count of the Marlborough partnership, $357.09 of which was trust funds.

238 LXIV.

On January 5, 1926, G. W. Peckham paid $812.00 of trust funds, being the only funds in the commingled account, upon the private debt of J. T. Harell and G. W. Peckham as members of the Marlborough partnership, and on January 12, a similar payment of $454.50 was made.

LXV.

On May 15, 1926, G. W. Peckham paid to plaintiff bank out of commingled funds on his personal debt $550.00, $254.21 of which was trust funds.

LXVI.

On August 10, 1926, G. W. Peckham paid to plaintiff bank $550.00 by check drawn on the commingled account at a time when same was constituted wholly of trust funds, said payment being for interest personally due the bank by G. W. Peckham.

LXVII.

On January 19, 1927, G. W. Peckham paid $1,009.10 of trust funds to the plaintiff bank upon his private debt by check drawn for $2,506.12 drawn against the commingled account.

LXVIII.

On March 16, 1927, G. W. Peckham paid the bank upon his personal debt $777.30 of trust funds by issuing his check against the commingled account for $1,500.00.

LXIX.

(1) On April 16, 1927, G. W. Peckham caused to be transferred to his trust Wichita Royalty property No. 97 in which G. W. Peckham was personally interested, and for which the trust paid $3,000.00, and of which payment G. W. Peckham received $2,500.00, checks therefor being charged against the trust account and deposited to G. W. Peckham's personal account with the bank and used for non-trust purposes.

239 (2) The trust had received $397.85 in oil runs from the said property and same was abandoned, worthless and of no value at the time of the institution of this suit and the trustee has no election to make with respect thereto, but if required, Cross-complainants now make such tenders and offer to do such equities as in good conscious required, alleging that the bank and G. W. Peckham should be charged in accounting with $3,000.00 and credited with said oil runs and the accounting computed with interest applied as the law directs.

LXX.

On October 14, 1927, G. W. Peckham caused trust check for $2,400.00 to issue payable to plaintiff's bank's order with voucher notation to show that it should apply upon the trust's debt to the bank, which check was deposited to G. W. Peckham's personal account. Therefrom he paid the bank but $1,336.00 on the trust fund and $520.00 on his own note, and the account at the time consisting wholly of trust funds, and the payment to the bank upon his personal debt being wholly of trust funds.

LXXI.

On September 27, 1928, G. W. Peckham paid from the commingled account $3,163.78, $438.06 of which was trust

funds, same being in payment upon his personal debt to the bank.

LXXII.

On November 1, 1928, G. W. Peckham issued his check against the commingled account payable to "Note and Interest" for $4,200.00 which was charged against the commingled account, and $426.95 of the trust funds were thus disbursed for non-trust purposes.

LXXIII.

On January 12, 1929, G. W. Peckham paid from the commingled account $2,013.33 upon his personal debt to plaintiff bank $234.22 of which was trust funds.

240 LXXIV.

On December 23, 1924, G. W. Peckham caused trust check No. 317 for $695.00 to issue drawn on plaintiff bank and deposited in G. W. Peckham's personal account. The trustee caused the books to show the trust's acquisition of the mineral interest from which the trust had received but $69.50, and the interest being valueless at the time of the institution of this suit and the present trustee but recently learning that G. W. Peckham was personally interested in the transfer to the company, the conveyance being from F. O. Harrell, but in fact, G. W. Peckham was personally interested and received $695.00 therefor; therefore, the trustee repudiates and makes such tenders and offers to do such equities as required, asking that $695.00 be charged against the bank and G. W. Peckham in an accounting with interest and the account credited with $69.50 and interest computed as provided by law.

LXXV.

Cross-complainants say that the records of the plaintiff bank and those of its officers and agents have not been

available for inspection by Cross-complainants, that all of the defalcations by the former trustee were accomplished through the facilities of the bank and its officers, largely upon checks made payable to the bank's order and there are numerous entries and cross entries, charges and counter charges, debits and credits, transmutations of funds and issuance of cashier's checks and travelers checks, the crediting of notes upon which G. W. Peckham was personally liable, but whose individual liability record does not disclose the existence of such liability, and in other ways the plaintiff bank and the deceased trustee so confused and confounded the respective accounts as that nothing short of an accounting to be made by the former trustee, by the plaintiff bank and by the
241 impleaded defendant, J. T. Harrell, will suffice to disclose the real transactions, all of which information is in the possession of the bank, its officers, agents, and employees, and not in the possession of cross-complainants. That cross-complainants have submitted to the bank all of their books and records which the bank has caused to be photostated, but that cross-complainants have been unable so to obtain a copy of the books and records of the bank, therefore, cannot more definitely plead than they have herein pleaded, but say that during the trusteeship of G. W. Peckham with the active participation by the plaintiff bank, its officers and agents, transfers were made from the trust account to the personal account of G. W. Peckham in the aggregate total of $253,418.41 and such funds commingled with the private funds of G. W. Peckham who therefrom paid during said time to plaintiff bank upon his personal indebtedness, the aggregate total of $250,078.36.

LXXVI.

While not all of the payments made by G. W. Peckham to the bank upon his private debts consisted of trust funds, yet, but for such transfers and but for his trust peculations, he would have been wholly unable to pay the

bank the monies which he personally borrowed from it, and said bank permitted such transactions to begin and thereafter continuously to occur that it might profit therefrom, as it did.

Wherefore, the following alternative prayers are made in the order named.

1. That this cause be remanded to the State Court whence it came.

2. That an account be stated between the several parties hereto with respect to the trust funds received and expended and the several purposes thereof.

242 3. That the debt due cross-complainants upon the facts above alleged be fixed, determined and adjudicated, and that cross complainants recover the amount thereof with interest and costs.

4. That cross complainants be awarded such other and further, general and special, legal and equitable relief to which cross complainants may be entitled.

KILGORE & ROGERS,
By GUY ROGERS,
Attorneys for Wichita Royalty Co. and its trustee.

The State of Texas,
County of Wichita.

E. E. Scannell being sworn on oath says that the facts stated therein are true.

(Signed) E. E. SCANNELL.

Sworn to and subscribed before me this 12th day of December, 1936.

(Signed) GRACE JARNAGAN,
(Seal) Notary Public, Wichita County, Texas.

WICHITA ROYALTY COMPANY'S CROSS COMPLAINT AND INTERPLEADER AGAINST J. T. HARRELL.

Filed in U. S. Dist. Court Dec. 12, 1936.

243 (Title Omitted.)

At a time when their first plea to this Court's jurisdiction and motion to remand has been overruled with exceptions allowed and entered, and at a time when the Court has directed their filing recasted pleadings within ten days from December 3, 1936, but without prejudice to their reserved right to file a second plea to this Court's jurisdiction, and motion to remand, come now Wichita Royalty Company, a joint stock association, and E. E. Scannell, its trustee, herein called cross-complainants, and recast their pleadings herein so that this cause of action against J. T. Harrell, W. H. Peckham, Administrator of the estate of G. W. Peckham, deceased, Hazel Peckham, surviving wife of G. W. Peckham, deceased, William Peckham, George Peckham, minors, and Robert Peckham, sole surviving children of G. W. Peckham, deceased, and Texas Investment Company, a dissolved corporation that was and is a citizen of Texas, shall be as follows:

I.

Cross-complainants say that the cause of action herein asserted was first asserted in the District Court of Wichita County, Texas, whence this case was removed upon petition of the defendants herein and others, in which cause so filed in the State Court, J. T. Harrell and W. H. Peckham, as said administrator, appeared, answered and invoked the Court's jurisdiction to determine matters of dispute between the parties. Cross-complain-
244 ants further say that there is no Federal question involved herein, that same does not involve a

separable controversy between the named defendants and that the suit is not one of which this Court has original jurisdiction and the same should be remanded to the State Court whence it came for which prayer is respectfully made.

II.

Wichita Royalty Company and E. E. Scannell, its trustee, herein called Cross-complainants, now complain of J. T. Harrell, W. H. Peckham, as administrator of the estate of G. W. Peckham, deceased, Robert Peckham, each citizens of Texas, and of Hazel D. Peckham, William Peckham and George Peckham, the remaining heirs of G. W. Peckham, deceased, resident citizens of the state of Colorado, and of Texas Investment Company, a dissolved corporation that was and is a citizen of Texas, hereinafter called defendants, and would respectfully show:

III.

That W. H. Peckham is the duly qualified and acting administrator of the estate of G. W. Peckham, deceased, and that Hazel Peckham, William Peckham, George Peckham, and Robert Peckham, are the sole and only heirs of G. W. Peckham deceased.

IV.

On January 1, 1926, G. W. Peckham and J. T. Harrell were business associates and good friends. The former was trustee of the Wichita Royalty Company, and the latter was the chief active officer of the plaintiff bank. These men were partners in a large surburban venture, and joint owners of land known as the Curlee tract; likewise they owned an undivided interest in a producing property known as the Stephens Royalty, G. W. Peckham having acquired his interest November 3, 1933 from

J. T. Harrell and another bank officer, said J. T.
245 Harrell owing the bank at that time $7,500.00, which indebtedness was increased on January 11th to $10,560.00, and again increased on January 19, to $15,574.44. G. W. Peckham, owed the bank $28,050.00. He owed J. T. Harrell and an associate banker $5,000.00 and interest upon notes executed November 3, 1925. J. T. Harrell and G. W. Peckham were jointly and severally liable to Highland Irrigation Company upon vendor's lien notes for the purchase of the Marlboro partnership property, totaling $51,895.00 with interest. J. T. Harrell was G. W. Peckham's personal banker and the latter would have told the former any matter or thing with respect to his business that the former should have asked. It was the custom and practice of the banks and bankers generally, and of the plaintiff bank in particular, to inquire as to the intended purpose for which the proceeds of a $15,000.00 to $25,000.00 loan would be used when an application therefor was made. Wichita Royalty Company was free of debt except current items. It owned valuable properties. It was not indebted to the bank.

V.

In such a setting J. T. Harrell and G. W. Peckham negotiated the sale by J. T. Harrell and another of the bank's officers, of their remaining interest in the Stephens Royalty, whereby Wichita Royalty Company obtained the legal title to said interest, the agreed consideration being $20,000.00, plus G. W. Peckham's personal interest in the Curlee land, then of the agreed and reasonable value of $2,407.00.

VI.

G. W. Peckham's personal balance at the beginning of business January 4th was $878.70. That day he caused Trust check No. 452 to be drawn on the bank payable to

his individual order for $5,000.00, which he that day deposited to his personal account. The next day he paid Highland Irrigation Company $812.00 upon the
246 joint obligation of J. T. Harrell and G. W. Peckham the check being drawn on the commingled account. From January 6th to January 11th, G. W. Peckham's commingled account consisted wholly of trust funds, and on January 11th he caused trust check No. 458 to issue, drawn on and payable to the bank's order in the sum of $5,000.00, which he deposited to his private account, and against which, and on the same day, he issued his check for $2,567.75, as his part of the joint purchase with Harrell and Basham of the Curlee land.

VII.

The next day, January 12th, at a time when Peckham's commingled account consisted wholly of trust funds, he issued his check to Highland Irrigation Company for $454.50 in payment on the joint obligation of J. T. Harrell and G. W. Peckham in their Marlboro partnership venture.

VIII.

The fourth day thereafter, January 16th, Wichita Royalty Company's liability record with the bank was charged with $15,300.00, although the Trust did not get credit for the proceeds of such loan until January 18th.

IX.

On January 16th, G. W. Peckham issued his check to J. T. Harrell and C. E. Basham for $2,201.32, drawn on the commingled account, $1,362.87 of which consisted of funds theretofore transferred from the trust account.

X.

The second day thereafter, January 18th, the day the trust received credit in its deposit account for the $15,000.00 loan, G. W. Peckham caused Trust check No. 461

for $15,769.07 to issue, payable to the bank's order and deposited in G. W. Peckham's personal account, noting for the first time in the records of the Royalty Company that such check, together with checks Nos. 452 and
247 458 were in payment for an interest in Stephens Royalty. G. W. Peckham's personal balance at the close of business January 18th of $18,765.87 was constituted wholly of funds transferred from the trust account.

XI. —

Thereafter and before another deposit to his personal account, and when the account still was constituted wholly of transferred funds, G. W. Peckham, on January 25th, issued his check to J. T. Harrell and C. E. Bahsm for $10,028.00, which check that day was charged against G. W. Peckham's commingled account. Half of the check, or $5,014.00, was deposited to J. T. Harrell's personal account with the bank, at a time when on January 25th his personal account was $219.16 and his personal liability to the bank was $15,574.44. That same day, and with $4,827.71 of the funds transferred from the trust account to G. W. Peckham's account, and then to J. T. Harrell's account, the banker who negotiated the January 16th loan from which the proceeds were derived, paid the bank upon his private debt the sum of $5,006.67, leaving his personal balance at the close of business January 25th, $186.29.

XII.

Three days later, January 28th, J. T. Harrell and C. E. Basham, acknowledged deed of conveyance to Wichita Royalty Company, and the receipt of the consideration therefor, which consideration J. T. Harrell testified was $20,000.00, plus Peckham's personal interest in the Curlee land, which J. T. Harrell testified was $2,407.00.

XIII.

The effect of the above is this: J. T. Harrell, as an individual, sold a valuable property. As a banker, he loaned G. W. Peckham the money with which it was bought, the loan being made upon the credit of the royalty company, to which company the deed ran. G. W.
248 Peckham, as an individual, disposed of his interest in the Curlee land for $2,407.00, paid and obligated himself to pay, and later paid $20,000.00 in cash, and as trustee, G. W. Peckham charged his trust $25,769.07 for the property and made a private gain of $3,362.07. Then, too, Peckham paid Harrell and Basham $10,028.00, which J. T. Harrell testified was G. W. Peckham's personal debt, and from J. T. Harrell's one-half thereof, deposited in the bank, J. T. Harrell paid the bank upon his private debt.

XIV.

On February 2nd, 1926, trust check No. 465, was deposited to G. W. Peckham's personal account for $400.00 on which day, and against the commingled account, G. W. Peckham drew his check for $5,100.00 payable to J. T. Harrell and C. E. Basham, $2,550.00 being deposited in the bank to the account of each payee. Of the $5,100.00 so paid the bank's officers, $3,074.15 was of the proceeds of monies transferred from the royalty account to G. W. Peckham's personal account. On February 13th, G. W. Peckham's personal liability to the bank was credited with $550.00, and his commingled account charged therewith upon his personal check drawn thereon.

XV.

On February 27, $400.00 was transferred from the trust account to G. W. Peckham's personal account, and on the same day G. W. Peckham drew a check against

the commingled account payable to the bank's order for $21,000.00. On the same day J. T. Harrell paid the bank upon his personal indebtedness $10,000.00, but, without additional records, we are unable to say what, if any, connection there is between these transactions.

XVI.

On March 1, 1926, G. W. Peckham owed the bank $28,050.00, plus interest. His personal balance that morning was $741.90. J. T. Harrell then owed the bank $7,060.00. G. W. Peckham and J. T. Harrell were still jointly obligated upon the Marlboro indebtedness, in excess
249 of $50,000.00. W. H. Peckham then owed the bank $6,120.00, and he was liable with J. T. Harrell and G. W. Peckham on the Marlboro indebtedness.

XVII.

That day, March 1st, G. W. Peckham and J. T. Harrell concluded negotiations for a $25,000.00 loan, whereby the trust's note therefor was executed and its liability account charged with $25,500.00, additional, and its deposit account credited with $25,000.00. On the same day, March 1st, G. W. Peckham, issued his check drawn on the commingled account payable to W. H. Peckham for $11,811.85 in payment to W. H. Peckham for his interest in Marlboro addition. On March 1st, G. W. Peckham's personal balance was $341.90, and his balance was insufficient to pay W. H. Peckham's $11,811.85 check until March 6th, on which day W. H. Peckham's personal balance of $225.20, consisting wholly of transferred funds itself, was increased $17,623.70 upon trust check No. 478 drawn on and payable to the bank's order, charged against the trust fund and deposited to the trustee's private account, the trustee causing the records to show the sale to his trust of one-half interest in the Marlboro

partnership. That same day, March 6th, G. W. Peckham drew his check against the commingled account, consisting wholly of transferred funds, for $5,060.00, payable to the order of Harrell and Basham, one half of which was deposited to Harrell's account and the other half to C. E. Basham's account in the bank. On March 9th, W. H. Peckham's $11,811.85 check cleared and same was added to his then deposit balance with the bank of $518.52, and on the same day W. H. Peckham paid to the bank his entire indebtedness of $6,120.00, all of which was paid with the proceeds of transferred funds except his beginning balance of $518.52.

XVIIII.

That G. W. Peckham during the period covering the transactions herein described was trustee of the Wichita Royalty Company and managing partner of the
250 Marlboro Addition, originally a partnership between W. H. Peckham, J. T. Harrell, G. W. Peckham, and another, but from and after March, 1926, when G. W. Peckham acquired W. H. Peckham's interest, the Marlboro partnership affairs were handled and administered by G. W. Peckham and J. T. Harrell.

XIX.

As trustee of the Wichita Royalty Company, G. W. Peckham had at his disposal, and subject to his check, large sums of money in the bank, whose chief executive was J. H. Harrell, who was jointly obligated with G. W. Peckham in large items of indebtedness and their joint venture as partners in the Marlboro Addition, necessitated the expenditure of large sums of money and G. W. Peckham was unable to pay his part thereof.

XX.

Accordingly, G. W. Peckham would from time to time, as his needs and those of the firm required, cause large

sums of money to be transferred from the trust account to his personal account so that therefrom he could, as he did, pay to or for the account of the Marlboro partnership, large sums of money and so that he could pay J. T. Harrell private debts which G. W. Peckham owed J. T. Harrell, causing the trust books to reflect the trust's investment and contribution to the Marlboro firm.

XXI.

Accordingly, trust checks totaling $57,219.44 were drawn against the trust deposit with the City National Bank of Wichita Falls, and charged against said account and either deposited to the account of G. W. Peckham or paid direct upon the obligations of J. T. Harrell and G. W. Peckham as partners in the Marlboro Addition, and such funds so transferred from the trust account to the private account of G. W. Peckham were in-
251 tended by G. W. Peckham to apply, and did apply, and were paid upon the debts due by the Marlboro partnership, and into its account or for its use and benefit and for the use and benefit of J. T. Harrell and G. W. Peckham, there being no consideration moving to the Wichita Royalty Company for such expenditure, the same being wholly beyond the power of G. W. Peckham to accomplish and same being for the purpose not authorized by the trust and the use of such money being known to the defendant J. T. Harrell who loaned substantial monies in the name of the trust in order that G. W. Peckham might obtain the same by transfer thereof to his private account.

XXII.

Furthermore, with the knowledge, consent and active participation of the defendant, J. T. Harrell, G. W. Peckham made a private profit of $3,362.07 out of the sale by J. T. Harrell and C. E. Basham to Wichita Royalty Com-

pany of the Stephens Royalty and from the proceeds of a loan made by J. T. Harrell on behalf of his bank the said J. T. Harrell was paid sums of money above set out.

XXIII.

Furthermore, G. W. Peckham, as trustee of the Wichita Royalty Company, withdrew from the trust account and applied to unauthorized purposes $200,000.00, the records of the bank showing the charge against the trust deposit, and a corresponding credit to the personal account of G. W. Peckham, and other entries reflecting the way and manner in which G. W. Peckham accomplished the mis-appropriations through the facilities of said bank, and the defendant J. T. Harrell, with knowledge and notice and possessed of such facts as reasonably to stimulate inquiry, which if pursued with reasonable diligence, would have disclosed to J. T. Harrell that G. W. Peckham was doing that with the trust funds so deposited in the bank of which J. T. Harrell was the executive head, which was beyond his power as trustee, for purposes
252 beyond the scope of his authority, for a purpose not authorized by the declaration of trust, wherefrom said bank had no power or authority to charge the trust's deposit account therewith and suit has been instituted in the District Court of Wichita County, Texas, for the recovery against said bank of the deposit account of Wichita Royalty Company with said bank, alleged to be $200,000.00, and in the alternative, against said bank for its active participation with G. W. Peckham in breaches of trust to cross-complainants damaged in the sum of $200,000.00, J. T. Harrell actively cooperating and participating with G. W. Peckham in all of said transactions upon which said suit against said bank is based, and reference is here made to the cause of action herein elsewhere asserted against said bank by Wichita Royalty Company.

XXIV.

That at the time of the death of G. W. Peckham he and J. T. Harrell and others were negotiating toward the formation of a corporation to take over the assets of the Marlboro Addition, said corporation known as the Texas Investment Company, which was chartered, but its charter forfeited, and the corporation dissolved in the spring of 1933, and the same was a dissolved corporation at the time it joined in the petition and filed the bond for the removal of said suit to the Federal Court.

XXV.

That Wichita Royalty Company holds record title to properties equitably owned by the estate of G. W. Peckham against which Wichita Royalty Company asserts a lien for the repayment of the mis-appropriations of trust funds by G. W. Peckham. There stands of record in the name of G. W. Peckham property equitably owned by Wichita Royalty Company and not claimed by the estate of G. W. Peckham, from which oil is being produced in substantial quantities of considerable value, the
253 amount and extent of which being unknown to cross-complainants. Furthermore, there has never been an accounting between the parties hereto or any of them with respect to receipts and expenditures of trust monies, and each party hereto should be required to state an account of such trust monies that have been received and such use thereof to which the same has been put, to the end that it may be determined what is the correct amount as between the parties inter se.

XXVI.

Cross-complainants say that the law of the case has been fixed and determined by the decision of the Supreme Court of Texas as set out in the mandate on file among

the papers in this case, to which reference is made for all purposes.

Wherefore, cross-complainants make the following alternative prayers, each presented in the order named:

1. That this suit be remanded to the State Court whence it was removed.

2. That cross-complainants recover of and from the defendants named above, jointly and severally, the sum of $200,000.00 with lawful interest thereon, for an accounting, and for such other and further, general and special, legal and equitable relief to which cross-complainants may be entitled.

KILGORE & ROGERS,
By GUY ROGERS,
Attorneys for Wichita Royalty Company and its Trustee.

The State of Texas,
County of Wichita.

E. E. Scannell being sworn on oath says that the facts stated in the above motion are true.

E. E. SCANNELL.

Sworn to and subscribed before me this 12th day of December, A. D. 1936.

GRACE JARNAGAN,
(Seal) Notary Public in and for Wichita County, Texas.

WICHITA ROYALTY COMPANY'S RECASTED CROSS COMPLAINT AND INTERPLEADER AGAINST CITY NATIONAL BANK IN WICHITA FALLS, ET AL.

Filed in U. S. District Court December 12, 1936.

254 (Title Omitted.)

At a time when their first plea to this Court's jurisdiction and motion to remand has been overruled with exceptions allowed and entered, and at a time when the Court has directed their filing recasted pleadings within the ten days from December 3, 1936, come now Wichita Royalty Company and E. E. Scannell, its trustee, herein called Cross-complainants, and recast their pleading herein so that the cause of action hereinafter stated against the cross-defendants and impleaded defendants herein named, shall be as follows:

I.

Cross-complainants say that the cause of action herein asserted was first asserted by pleadings filed in the District Court of Wichita County, Texas, whence it was removed to this Court by petition and bonds filed by cross-defendants herein and others; that the suit involves no Federal question, involves no separable controversy, is not wholly between citizens of different states and is not otherwise within the original jurisdiction of this Court.

II.

Wichita Royalty Company and E. E. Scannell, its trustee, now complain of the City National Bank in Wichita Falls, J. T. Harrell, Trustee, L. H. Cullum, J. T. Harrell, Leslie Humphrey, Jack Jeffus, Oral Jones, Frank Kell,

Joe Kell, J. J. Perkins, C. W. Snider and F. P. Timberlake, and would respectfully show:

255 III.

That the City National Bank in Wichita Falls is a National banking institution and citizen of Texas, and domiciled in Wichita County; that J. T. Harrell, L. H. Cullum, Leslie Humphrey, Jack Jeffus, Oral Jones, Frank Kell, Joe Kell, J. J. Perkins, C. W. Snider and F. P. Timberlake are each resident citizens of Wichita County, Texas, and each a stockholder in and a director of the City National Bank of Wichita Falls, and have been such at all times hereinafter mentioned.

IV.

The City National Bank of Wichita Falls will herein be referred to as the "old bank" and the City National Bank in Wichita Falls will be referred to as the "new bank".

V.

Beginning in 1930, and continuously thereafter there were increasingly heavy withdrawals of deposits from the old bank and an increased lessening of its assets. Such had been the loans made of available funds as that the notes receivable were not collectible. The National bank examiner from time to time required the charging off of a large part of the listed assets of said old bank. The liquid assets of the bank became such as it was reasonably apparent that it could not continue to meet the demands of those withdrawing their funds. The old bank became insolvent and was insolvent on March 2, 1933, having closed its doors March 1, 1933, and having never been open for business again.

VI.

From and after March 1, 1933, the old bank ceased to transact business as a going concern. It being a corporation and a citizen of Texas, all of its assets immediately became a trust fund for the benefit of the creditors to be used solely and only for the payment of the debts of the corporation, and upon all of which assets its creditors had an equitable lien.

256 VII.

Among the creditors of the old bank March 1, 1933, were cross-complainants, to whom the old bank was justly indebted in the sum of $200,000.00.

VIII.

The directors of the old bank became trustees in possession of all of the assets of the insolvent corporation whose duty it was to see that such assets of the corporation were devoted to the payment of the debts of the corporation. They were not permitted to prefer one creditor over another, nor to assign or convey its assets free of equitable lien of the creditors thereto, which lien so existing was and continues to be dischargable only upon payment to the creditors in full or prorata from the funds received from the corporation property. The directors were charged with the duty of seeing that the creditors of the corporation were either paid in full or that they were paid prorata out of the funds received from the assets of the corporation.

IX.

Notwithstanding such duties imposed upon them by the common law as administered in Texas concerning an insolvent corporation, the defendant directors

breached such duties, and on March 15, 1933, transferred, assigned and pledged to the new bank all of its assets, the new bank assuming all liabilities of the old bank all of such assets having substantial value being transferred outright to the new bank and the assets of doubtful value being transferred and assigned to the defendant J. T. Harrell as trustee, under an instrument on its face making him the trustee for the benefit of the new bank.

X.

Prior to March 1, 1933 and at a time when the capital of the old bank had become impaired and it was obvious to the directors that large sums of new money would be required to restore such capital as an alternative for the closing of the bank, and for the purpose of protecting their rights and liabilities as directors and
257 stockholders of said bank, the defendant directors contributed more than $200,000.00 to the impaired capital of the old bank, their rights to receive reimbursement thereof being inferior in all respects to the rights of the general creditors of the bank to be paid in full.

XI.

Said defendant directors, after the closing of said old bank and when it was insolvent, caused the assets of the old bank to be applied not to the ratable payment of general creditors, but in excess of $200,0000.00 such assets were caused by the defendant directors to be applied to the formation and incorporation of the new bank of which they became stockholders and directors and to obligations created by the directors as individuals upon their contributing to the impaired capital of the old bank and to other purposes, in disregard and in prejudice to the debt justly due and owing Cross-complainant whose debt remains wholly unpaid and the defendant directors

have so handled the transactions between the two banks and have so disposed of the assets of the old bank as to render plaintiff's debts uncollectable unless the parties sued herein be required to respond in damages for the value of the assets diverted to purposes other than the payment of general creditors.

XII.

That as a result of the breach by the directors of their common law duty to administer the assets of the insolvent corporation as trustees for the benefit of the general creditors and their carelessness, negligence and gross mis-management of the affairs of the bank, if not an intentional disposition of its funds with a view to present a ratable distribution of its assets among creditors, all of such acts being participated in by the individuals sued herein, the general creditors of said bank have sustained losses aggregating the total of
258 their respective debts and cross-complainants have sustained a loss of $200,000.00.

XIII.

That the defendants herein, by transfer, sale and assignment, have placed the assets of the old bank beyond the reach of the creditors and thus destroyed the equitable lien thereon which cross-complainants had as of the date and during the insolvency of the old bank, which then was of the reasonable value of in excess of $200,000.00, but which has been lost and destroyed by reason of the acts and conduct of the parties defendant herein to cross-complainants' damage in the sum of $200,000.00.

Wherefore, alternative prayers are made in the order named:

1. That this suit be remanded to the State Court whence it came.

2. That cross-complainants do have and recover of and from the defendants, jointly and severally, their damages by reason of the facts hereinabove alleged, and that they have such other and further, general and special, legal and equitable relief to which they may be entitled.

KILGORE & ROGERS,
By GUY ROGERS,
Attorneys for Cross-Complainants.

The State of Texas,
County of Wichita.

E. E. Scannell, being sworn on oath, says that the facts stated in the above motion are true.

E. E. SCANNELL.

Sworn to and subscribed before me this 12th day of December, A. D. 1936.

GRACE JARNAGAN,
(Seal) Notary Public in and for Wichita County, Texas.

ANSWER OF CITY NATIONAL BANK IN WICHITA FALLS, ET AL.

Filed in U. S. Dist. Court Dec. 21, 1936.

259 (Title Omitted.)

The defendants, The City National Bank in Wichita Falls, a national banking association, J. T. Harrell, Trustee, L. H. Cullum, J. T. Harrell, Leslie Humphrey, Jack Jeffus, Oral Jones, Frank Kell, Joe Kell, J. J. Perkins, C. W. Snider, and F. P. Timberlake, come now and answer the cross complainant, Wichita Royalty Company's, recasted pleadings against them, filed herein on

the 12th day of December, 1936, and for such answer plead as follows:

I.

These defendants adopt the answer filed herein to the cross complainant's recasted pleadings and cross action against The City National Bank in Wichita Falls, J. T. Harrell, Trustee, E. A. Deaton, Liquidating Agent, et al, and plead said answer in so far as same herein applies to the allegations in this cross bill of complaint.

II.

Further answering said cross complaint against these interpleaded defendants, they plead as follows:

In answer to paragraph numbered three of said cross complaint, these interpleaded defendants admit the allegations contained in said paragraph numbered three thereof.

260 III.

Answering paragraph numbered five of said cross complaint, these interpleaded defendants admit that prior to March, 1933, and due to the general state of unrest and the panic which existed over the Nation and the world, there were heavy withdrawals from The City National Bank of Wichita Falls, the old bank; that the withdrawals did not increase or lessen the relative value of the assets remaining, but did require said bank to liquidate its loans and other assets to meet such withdrawals. They deny, however, that the said bank became insolvent on March 2, 1933, and say that the closing of its doors was due to a presidential proclamation closing the doors of all banks in the Nation, due to the financial condition then existing and the heavy run on banks in general.

IV.

In answer to paragraph numbered six, these interpleaded defendants admit that after March 4, A. D., 1933, the old bank ceased to transact business as a commercial banking institution. They admit that it was a corporation created under the laws of the United States of America and as such was a citizen of Texas, as such is defined under Subdivision 16, Section 41, Title 28, U. S. C. A. But this suit involves the winding up of the affairs of a national bank and arises also under the laws of the United States of America, and said bank is therefore, for the purposes of this suit, a corporation created under the laws of the United States.

These interpleaded defendants deny that the assets of said bank upon the closing of its doors immediately became a trust fund for the benefit of the creditors, or that the law applicable thereto was ruled by the State laws, but say that the question of whether such
261 funds were trust funds is governed solely by the laws of the United States of America.

V.

In reply to paragraph numbered seven, these interpleaded defendants deny that the cross complainants were, on March 1, 1933, creditors of it, or that said old bank was indebted to said cross complainants in the sum of $200,000.00, or in any other sum; but on the contrary these interpleaded defendants say that on said date the cross complainants were indebted to the old bank in the principal sum of $22,000.00, evidenced by a promissory note executed by Wichita Royalty Company and payable to said old bank, and in addition thereto were further indebted to said old bank in the principal sum of $14,596.00, being the balance of a deficiency due said old bank on a note of The Texas Investment Company, upon which the cross complainant was liable as indorser.

VI.

In reply to paragraph numbered eight, these interpleaded defendants deny that the directors of the old bank became trustees by reason of the insolvency of said bank, and deny that said bank was on the date it closed its doors insolvent. In this connection, these interpleaded defendants say that on the date aforesaid they did undertake to pay all depositors, as well as creditors who were shown to be such by the books of said bank, on March 15, A. D., 1933, and to this end the directors sued herein by the cross complainants caused the new bank to be organized and an entire capital to be paid in and caused a contract to be made between the old bank and the new bank, copy of which is attached to the bill of complainant filed by the old bank against the Wichita Royalty Company, et al, and marked Exhibit "D", and which contract, among other things,
262 required the new bank to assume the deposit liability of the old bank as shown by its books at the close of business on March 14, 1933, which deposits were in the aggregate sum of $3,286,707.46, together with an additional sum of $556,500.00, bills payable owing by said old bank; that no other liabilities were assumed by the new bank; and to protect the new bank against loss a pledge was made of the remaining assets of the old bank.

These interpleaded defendants deny that any debt existed in favor of the cross complainants, or that they were charged with any duty in respect to the alleged claimed indebtedness herein sued upon.

VII.

In answer to paragraph numbered nine, these interpleaded defendants deny that the laws of the State of Texas control the administration of the affairs of an insolvent national bank, and say that the affairs of an insolvent national bank are governed by the national

laws, that is to say, the laws of the United States; and they deny that the director defendants breached any debts devolved upon them by the laws of the United States or the laws of the State of Texas, but say that they fairly and honestly administered the affairs of the old bank so that all creditors and depositors have been fully paid, except a deficiency note owing by the old bank to the new bank, which note is now in the sum of $189,000.00, and which is secured by a pledge of all of the remaining assets of the old bank, including the obligation owing by the cross complainants to said old bank. They deny that the new bank assumed all of the liabilities of the old bank, but only such liabilities as were shown by the books of the old bank on March 14, A. D., 1933. These interpleaded defendants also deny that all the
263 substantial assets of the old bank were transferred outright to the new bank, but say that there was a transfer of substantial assets of the value of $3,455,613.43; that there remains substantial assets of the old bank, which remaining assets were pledged to secure the new bank in the difference between the value of the assets transferred and the amount of the indebtedness assumed by the new bank; that this difference has been reduced to $189,000.00 and is wholly secured by said pledge.

VIII.

These interpleaded defendants in reply to paragraph numbered ten admit that the capital of the old bank became impaired on and prior to March 1, 1933; they admit that they assisted in the restoring of confidence by the loan of their credit in the way of indorsements and guarantees, but did not contribute any actual cash to the capital of the old bank and have never received any sums whatever from the old bank in respect to any such alleged contributions. In this respect these interpleaded defendants say that in order to restore confidence and to fully protect the depositors of the old bank

and to allay their fears for the safety of their funds, the individual stockholders, who are made parties defendant to the cross action herein, created a new bank and contributed an entire capital thereto, except such as was sold by way of preferred stock to Reconstruction Finance Corporation; that after the creation of said new bank, referred to in the foregoing, a contract was made by the old bank, which contract was made with the full approval of the Comptroller of Currency of the Federal Reserve Bank and the Banking Department of the United States of America. This contract provided for
the purchase of certain assets by the new bank
264 from the old bank and the assumption of certain liabilities by the new bank owing by the old bank. The contract was fairly made, was approved by the directors of both banks, by the Comptroller of Currency and the Department of Banking of the United States, and did not require the assumption of any obligations on the part of the new bank other than obligations named in said contract and did not include the alleged liability sued upon herein by the cross complainants.

IX.

In reply to paragraph numbered eleven, these interpleaded defendants say: They deny the insolvency of the old bank at the date of the contract in question was made; they deny that $200,000.00 of the assets of the old bank were used as a contribution to the capital of the new bank, and further deny that there was any repayment from the assets of the old bank to any individual director or stockholder, upon any contribution to capital.

They deny that there was any act of prejudice or unfair dealing to any creditor of the old bank in respect to the formation and handling of the affairs of the two banks. They further deny that the old bank owes any debt to the cross complainants herein.

X.

In reply to the paragraph numbered twelve, these interpleaded defendants deny that they have breached any duty, common law or otherwise, to administer the assets of The City National Bank of Wichita Falls (the old bank), or that they were trustees, or that they were guilty of any carelessness or negligence or guilty of gross mismanagement or were guilty of any intentional disposition of its funds with a view to prevent a ratable distribution of its assets among its creditors. They
265 deny that the general creditors of said bank have sustained any loss or that the cross complainants have sustained any loss in the sum of $200,000.00, or any other sum.

XI.

In answer to the paragraph numbered thirteen, these interpleaded defendants deny that the sale, transfer, and assignment of the assets of the old bank has placed same beyond the reach of the creditors, but say that said sale was to effect the payment of the creditors of the old bank, as shown by the contract of March 15, 1933; and they deny that the said cross complainants ever had any equitable lien on the assets of the old bank, or that it was insolvent; and they deny that said cross complainants have lost any lien and that they ever had any lien, and deny that the said cross complainants have been damaged in the sum of $200,000.00, or any other sum.

XII.

By way of affirmative plea and defense these interpleaded defendants respectfully show with respect to the claims against the defendant directors of the new bank that all the transactions complained about were had on or about March 15, A. D., 1933; that the organization of the new bank and the fact that the old bank had gone into voluntary liquidation was fully known to Scannell and Wichita Royalty Company, or could have been known

upon the slightest of inquiries; that publication was made of the notice of the old bank going into voluntary liquidation in the local newspapers of Wichita Falls, Texas.

and the local newspapers of Wichita Falls, Texas,
266 fully reported the formation of the new bank.

Therefore, these interpleaded defendants charge that the cross complainants knew, at the time, all that happened in respect to the organization of the new bank, its contract with the old bank, and the old bank's going into voluntary liquidation. Notwithstanding such, no attack was made thereon and no attempt was made to hold the defendant directors and the new bank liable upon any theory of dereliction in their duties as alleged trustees for the creditors of the old bank from and prior to March 15, A. D., 1933, and June 18, A. D., 1936; and because of such the cross complainants are barred by laches and limitations and the equitable doctrine of stale demand, which these interpleaded defendants plead in bar of the cross complainants' right to recover herein.

Wherefore, interpleaded defendants pray that cross complaint against them be dismissed and for such other relief in equity as they may be entitled to.

WEEKS AND MORROW,
BULLINGTON, HUMPHREY & KING,
Attorneys for the Interpleaded Defendants, The City National Bank in Wichita Falls, et al.

CROSS COMPLAINT AGAINST THE WICHITA ROYALTY COMPANY, E. E. SCANNELL, TRUSTEE, AND THE CITY NATIONAL BANK OF WICHITA FALLS, TEXAS:

The City National Bank in Wichita Falls, a national banking corporation, presents this its cross bill of com-

plaint herein against the Wichita Royalty Com-
267 pany, a trust estate, and E. E. Scannell, its trustee, together with The City National Bank of Wichita Falls, Texas, a national banking corporation, now in liquidation, and for cause of action says:

I.

Wichita Royalty Company and its trustee is indebted to The City National Bank of Wichita Falls, Texas, upon two promissory notes, fully set forth and described in the bill of complaint filed by The City National Bank of Wichita Falls herein against the Wichita Royalty Company, which indebtedness aggregates, with interest, the sum of $60,000.00, and which indebtedness is unpaid.

That on March 4, A. D., 1933, pursuant to a presidential proclamation, The City National Bank of Wichita Falls closed its doors to the transaction of business; that during the bank holiday, which ended March 15, 1933, The City National Bank in Wichita Falls was created as a national banking association, with license to do business, and that The City National Bank in Wichita Falls made a written contract and agreement with The City National Bank of Wichita Falls, whereby The City National Bank of Wichita Falls transferred to The City National Bank in Wichita Falls certain of its assets outright and made a written pledge of its remaining assets, to satisfy, secure and pay The City National Bank in Wichita Falls in the assumption of certain deposits, liabilities, and bills payable assumed in said contract, a copy of which contract is attached to plaintiff's bill of complaint filed herein and marked Exhibit "D"; that said contract was fairly made, approved by the directors of said two banks, by the Comptroller of the Currency, and the Department of Banking of the United States, and that said contracts was duly consummated; that among the assets assigned as
268 a pledge to secure the payment of the difference between the value of the assets assigned to the

new bank and the amount of the indebtedness assumed by the new bank were the obligations of cross complainants herein sued upon.

II.

Following the making of said contract, The City National Bank of Wichita Falls, pursuant to the statutes and laws of the United States of America and a resolution and act of the stockholders of said bank, went into voluntary liquidation; that C. E. Basham was appointed liquidating agent and continued to act as such until January 8, A. D., 1935, at which time he resigned and E. A. Deaton was duly selected in the manner provided by law and has continued to act as liquidating agent of said bank since that time.

III.

That The City National Bank of Wichita Falls at the time of the execution of said contract of March 15, 1933, executed a note to The City National Bank in Wichita Falls for the amount of the difference between the face value of the assets transferred and the debts assumed, which note was secured by a pledge of the remaining assets of said bank, including the obligations of the Wichita Royalty Company here sued upon; that said note has been reduced to the sum of $189,000.00 under the liquidation of said bank.

IV.

That among the amount pledged were the entire assets of The Texas Investment Company, which consisted of approximately 200 residential lots in Wichita Falls, Texas, in the vicinity of the new Junior College, and being the property known as the Marlborough Addition
269 to the City of Wichita Falls, and in addition thereto various other lands and properties, real

estate, and personal property situated in Wichita County, Texas, and elsewhere; that E. A. Deaton as liquidating agent has continued to orderly liquidate the assets of The City National Bank of Wichita Falls and apply the proceeds received threfrom to the payment of the indebtedness due by said bank to the new bank, and that said bank has been in orderly liquidation up until the time of the filing of the cross action herein by the Wichita Royalty Company against The City National Bank of Wichita Falls and this bank and its directors.

V.

That on June 18, 1936, said cross complainant, Wichita Royalty Company, and E. E. Scannell, Trustee, filed in the District Court of Wichita County, Texas, 30th Judicial District, a cross action and interpleader against The City National Bank of Wichita Falls and its liquidating agent and against this bank and its directors and against J. T. Harrell, Trustee, under the pledge agreement aforesaid and claimed an indebtedness upon deposit liability of $200,000.00. This suit so filed by the cross complainants attacked as void and fraudulent the transfer of assets from the old bank to the new bank and the pledge of the remaining assets as security for the difference between the value of the assets assigned to the new bank and the amount of the indebtedness assumed by the new bank, as aforesaid, and asked for an accounting and the winding up of the affairs of the old bank. The Texas Investment Company was likewise made a party to said suit and its title was attacked by said cross action. A notice lis pendens of said suit was filed and is still pending and is of record in the office of the County Clerk of Wichita County, Texas, being duly recorded on
270 June 19, 1936, said notice lis pendens giving notice of said suit of Wichita Royalty Company against the old bank and the new bank, the liquidating agent, The Texas Investment Company, and the trustees of the new bank and against J. T. Harrell as trustee under the pledge agreement, and they claimed an indebtedness

due of $200,000.00, copy of which lis pendens notice is attached to the bill of complaint, marked Exhibit "E" and is here referred to, which lis pendens notice creates a cloud upon the title to the whole of the property situated in Wichita County, Texas, held by the old bank and the liquidating agent and J. T. Harrell, Trustee, and has seriously impaired and has rendered impotent the power of the said E. A. Deaton as liquidating agent to further orderly liquidate the assets of the old bank. This cloud is outstanding by virtue of said notice lis pendens, and it therefore becomes necessary to wind up the affairs of The City National Bank of Wichita Falls in this proceeding and to determine the validity under the laws of the United States of America relating to national banks of the transfer and pledge of the assets of the old bank to the new bank.

VI.

The City National Bank in Wichita Falls, the new bank, further charges and claims that the transfers made by the old bank to the new bank are valid and legal and were made without fraud; that The City National Bank of Wichita Falls is duly indebted to this bank in the sum of $189,000.00; that said indebtedness is secured by a pledge of the notes sued upon by complainant, The City National Bank of Wichita Falls, and owing by the Wichita Royalty Company, together with the other remaining assets of the old bank.

271 VII.

That owing to the condition of the title and by virtue of the pendency of the cross complaint against the old bank and the new bank, the liquidating agent of the old bank, and J. T. Harrell, Trustee, and the notice lis pendens thereof, it is impossible to orderly wind up the affairs of the old bank except in this proceeding. It is impossible for the liquidating agent (on account of the claimed indebtedness by Wichita Royalty Company herein) to

sell and convey good title to the assets of the old bank pledged to J. T. Harrell, Trustee, or to disburse funds received from sale and liquidation and collection of such assets. Therefore, an order winding up the affairs of the old bank is required in this proceeding, as well as a determination of the validity of the transfers made by the old bank to the new bank, under the laws of the United States, particularly Section 181, Title 12, U. S. C. A.

Wherefore, premises considered, The City National Bank in Wichita Falls, complainant in this cross action, prays for the establishment of the validity of the pledge agreement wherein the remaining assets of the old bank, including the obligations of the Wichita Royalty Company, were pledged to this bank as security for its deficiency note and for the foreclosure of such pledge and further determination of the validity of the transfers, pledges, assignments, and conveyances made by The City National Bank of Wichita Falls to The City National Bank in Wichita Falls, pursuant to the contract of March 15, 1933, and for removal of the cloud cast upon its title to said assets by the claims of the plaintiffs, Wichita Royalty Company and E. E. Scannell, Trustee, and further for the establishment of its indebtedness against the said Wichita Royalty Company and E. E. Scannell, Trustee, and for the fixing and enforcement of the deficiency,
272 if any deficiency should appear, as against said Royalty Company and said Scannell, and for a winding up of the affairs of The City National Bank of Wichita Falls and for the enforcement of all of its rights growing out of said winding up of the affairs of said bank, and complainant prays for such other and further relief, both general and special, as it may be entitled to under the facts in a Court of Equity.

WEEKS AND MORROW,
BULLINGTON, HUMPHREY &
KING,
Attorneys for The City National Bank in Wichita Falls.

The State of Texas,
County of Wichita.

Leslie Humphrey, attorney for the interpleaded defendants, being duly sworn, says that he has read the foregoing answer and cross-action; that he is attorney for the parties thereto, and that the statements of facts therein contained are true and the statements upon information and belief as to facts as therein stated are verily believed by him to be true.

LESLIE HUMPHREY.

Sworn to and subscribed before me, this 21st day of December, A. D. 1936.

MRS. GERTRUDE TURNER,
(Seal) Notary Public, Wichita County, Texas.

ANSWER OF J. T. HARRELL AND THE TEXAS INVESTMENT COMPANY TO THE CROSS-PETITION FILED AGAINST THEM, INDIVIDUALLY, BY THE WICHITA ROYALTY COMPANY.

Filed December 23rd, 1936.

273 (Title Omitted.)

Defendants, J. T. Harrell and the Texas Investment Company come now and answer cross-complainant, Wichita Royalty Company's cross action and cross complaint filed against these answering defendants, and for such answer plead, as follows:

I.

These defendants adopt the affirmative defenses heretofore plead by them and the other inter-pleading defendants in their reply to the cross action filed by the

Wichita Royalty Company and E. E. Scannell, its trustee, against the City National Bank of Wichita Falls, Texas, J. T. Harrell, Trustee, E. A. Deaton, Liquidating Agent and W. H. Peckham, Administrator of the estate of G. W. Peckham, deceased, Hazel D. Peckham, surviving wife of G. W. Peckham, deceased, William Peckham and George Peckham, minors, and Robert Peckham, sole surviving children of G. W. Peckham, deceased, and the Texas Investment Company, and replead all the affirmative defenses in said answer in reply to the cross action and cross complaint here presented.

274 II.

Much of the matters contained in the cross action against these individual defendants is but a repetition of the facts pleaded in the cross action against the City National Bank of Wichita Falls, and others, and these defendants adopt each and all of the defenses, pleas and replies, which they have made to the cross action of the cross-complainant, Wichita Royalty Company, in their answer aforesaid, and adopt the same.

III.

Answering, seriatim, said cross complaint, these complainants plead as follows:

These defendants admit the citizenship of the parties as alleged in paragraph II, except they deny that the Texas Investment Company is a dissolved corporation. They say it is a corporation duly incorporated and in good standing.

IV.

Replying to paragraph III of said cross-complaint, these defendants admit the allegations therein contained.

V.

Replying to paragraph IV, these defendants say that J. T. Harrell and G. W. Peckham were joint owners of certain real estate, principally of which was the property known as the "Marlborough Addition, near Wichita Falls, and this was the extent of their business association; admit that G. W. Peckham was trustee of the Wichita Royalty Company, say that J. T. Harrell was an active officer of the plaintiff, Bank, but was not the chief active officer; that he probably had more actual authority, but there were other officers who assisted in the management of the Bank's affairs, the directors; that the tract referred to as "a large suburban venture" was the Marlborough Addition, a tract of about sixty-six acres of land, near the city of Wichita Falls,
275 Texas, and the Curlee tract was a small farm near Wichita Falls, Texas, owned by J. T. Harrell, C. E. Basham and G. W. Peckham; the undivided ownership in the Stephens Royalty arose only in this manner. J. T. Harrell and C. E. Basham owned, each, an undivided 1/4th interest in the Stephens royalty. In the latter part of 1925, or the first part of 1926, they sold a one-fourth interest to G. W. Peckham for a consideration of $30,000.00; and a few weeks later sold their remaining interest to the Wichita Royalty Company, for a consideration of approximately $25,000.00; they were joint owners only; in the interim, between the first sale to G. W. Peckham and the second sale to the Wichita Royalty Company, being only a few weeks. As to the exact amount of indebtedness pleaded in said paragraph IV, these defendants are without information to accurately state the same, but do say that G. W. Peckham owed the Bank substantial sums and that J. T. Harrell was also indebted to the Bank; that J. T. Harrell and G. W. Peckham, together with J. A. Kemp and W. H. Peckham were jointly and severally liable to the Highland Irrigation Company upon certain purchase price notes for the purchase of the Marlborough Addition; that it was not.

in fact a partnership. but a joint-venture in the purchase of said real estate; the amount of such indebtedness owing to the Highland Irrigation Company was substantial, but these defendants are without accurate knowledge at this time to say as to the exact amount thereof; they deny that J. T. Harrell was the personal banker of G. W. Peckham, unless it could be said that his business deals with the City National Bank, of which J. T. Harrell was an officer would make J. T. Harrell such personal banker; as to the allegation that Peckham would have told Harrell anything with respect to his business, or that the former should have asked, is purely conjectural and speculative, and therefore, they deny this allegation; as to the custom and practice of the Bank in general, defendants say that, sometimes a banker inquires as to the purpose of a loan and at other times he does not,
and that there was no general custom in such
276 respect, and therefore, deny such allegation.

VI.

In reply to paragraph V, these defendants say that the same is a conclusion, except they admit that C. E. Basham and J. T. Harrell sold to the Wichita Royalty Company a one-fourth interest in the Stephens Royalty; they deny that the consideration was as stated, but say that the consideration for such sale was the sum of $22,-201.32 cash, and G. W. Peckham's interest in the Curlee land was the reasonable value of $3557.75, and deny that the agreed value was placed on the Curlee land at the time of the sale.

VII.

Answering paragraph VI, these defendants say they are without sufficient knowledge to accurately state the deposit balance on the date mentioned, or as to the matters relating to the drawing of a check for $5000.00,

but deny that the individual account which the cross-complainant calls "a commingled account" consisted solely of trust funds, and say that there was no payment on said date of trust funds to the Highland Irrigation Company, neither was there any payment of trust funds by G. W. Peckham out of his individual account for the purchase of the Curlee land.

VIII.

Replying to paragraph VII of said cross-complaint these defendants deny that the individual account of G .W. Peckham on January 12th, consisted solely of trust funds, but say that he had more than the sum of $454.50 of his individual money without causing any sums transferred from the Royalty Company.

IX.

Replying to paragraph VIII, these defendants admit the allegation contained therein and say that they have effectually explained the transaction in their answer on behalf of the City National Bank of Wichita Falls, Texas, and others; that is to say, that the loan was properly made after banking hours and that the intervening day was probably a holiday and the credit of
277 individual ledger was not made until the succeeding day.

X.

Answering paragraph IX, these defendants say:

They deny that the sum of $1,362.87, or any other sum paid C. E. Basham and J. T. Harrell consisted solely of trust funds, and say that the said check or payment to Harrell and Basham of $2201.32 was a payment upon the Stephens Royalty, the title to which was taken in the name of Wichita Royalty Company.

XI.

Answering paragraph X of said cross complaint, these defendants say they are without information as to what the royalty records show as E. E. Scannell kept them. They deny that G. W. Peckham's personal balance at close of business on January 18th, in the amount of $18,765 87 was trust funds; say that the balance on deposit on said date was Peckham's individual money.

XII.

Replying to paragraph XI, these defendants say they deny that G. W. Peckham's account on said date mentioned consisted of trust funds. They say that the payment to Harrell and Basham, on January 25th, was payment upon the Stephens Royalty purchase made for the Wichita Royalty Company, and that J. T. Harrell and C. E. Basham were entitled to one-half of said payment, as it was their property. As to whether the defendant, J. T. Harrell paid his debt, or his portion of it to said Bank, these defendants say that he had the right to pay his debts from such funds, even though it did leave his personal balance only $186.29. As to these figures, these defendants say that they have not checked them up to see if they are correct, but assume they are.

278

XIII.

In reply to paragraph XII, these defendants say that Harrell and Basham executed a deed to the Wichita Royalty Company for the Stephens Royalty, on the date mentioned pursuant to a prior contract for the trustee to buy the same, but the consideration was not as alleged in paragraph XI, but the true consideration was the sum of $22,201.32 cash, and the transfer of the interest in the Curlee land which was worth more than $2,407.00.

XIV.

Replying to paragraph XIII, these defendants say that Harrell and Basham sold some valuable property to the Wichita Royalty Company; they deny that Harrell and Basham loaned G. W. Peckham the money, but loaned the money to the Wichita Royalty Company, and that J. T. Harrell and C. E. Basham sold said property for less than it was actually worth at said time; that they sold the property for a consideration of Twenty-two Thousand oc 1 dollars cash, and a transfer of G. W. Peckham's interest in the Curlee land, and that they knew nothing about any private gain that Peckham made in the transaction, but that the property was sold to the Wichita Royalty Company in good faith, without any knowledge on their part that G. W. Peckham was making any personal gain in the transaction; that if Peckham did make any personal gain in the transaction, he alone would be responsible to the Company therefor; that the property has paid in oil produced, and from the sale price, far in excess of the amount paid by the Wichita Royalty Company. That the allegation as to what Harrell testified is not an allegation of fact, and should be stricken; that the payment of $10,028.00 mentioned was a payment on part of the purchase price of the Stephens Royalty, which was sold to the Wichita Royalty Company.

279 XV.

Replying to paragraph XIV, these defendants say that the check mentioned was a salary check by the Wichita Royalty Company to G. W. Peckham; that the check for $5100.00 was the payment by G. W. Peckham to J. T. Harrell and C. E. Basham from the sale of 1/4th interest of the Stephens Royalty made to Peckham, which was a sale made prior to the sale of the 1/4th interest to the Wichita Royalty Company. They deny that any sum of the $5100.00 paid the bank's officers was from

the proceeds of moneys transferred from the Royalty Company's account, or that any part of the $550.00 was for funds received from the Royalty Company's account.

XVI.

Replying to paragraph XV, these defendants say that the check for $400.00 mentioned was merely a salary check due G. W. Peckham; that there was no relationship whatever between the payment of the $21,000.00 and Harrell's payment of his personal debt to the bank, of $10,000.00, and that said allegations are merely an attempt to create a prejudicial inference, which should be stricken.

XVII.

Answering paragraph XVI, these defendants say they are without information as to the exact amount G. W. Peckham owed the Bank on March 1, 1926, but that it was a substantial sum of money and they are without information as to the exact amount of personal balance of G. W. Peckham, or as to J. T. Harrell's exact indebtedness, but say that G. W. Peckham did owe the Bank and J. T. Harrell owed the Bank, and that G. W. Peckham and W. H. Peckham, as well as J. T. Harrell and J. A. Kemp were jointly obligated upon the notes to the Highland Irrigation Company for the purchase of the property known as the Marlborough Addition, and that W. H. Peckham was also indebted to the Bank, as he was generally a borrower as well as a depositor; all of the parties were customers of the Bank and the fact that they owed the Bank was no reflection upon the bank's business judgment, nor the parties' integrity who owed the same.

280

XVIII.

These defendants in reply to paragraph XVII, say that G. W. Peckham, for and on behalf of the Wichita Royalty

Company, borrowed the sum of $25,000.00, as alleged, and that said sum was credited to its account; that neither of these defendants were charged with investigation as to what G. W. Peckham, as trustee, would expend the moneys for; they believed and had the right to assume that such expenditures would be rightful. While J. T. Harrell never had any actual knowledge of the transactions complained of until after the institution of this suit, and then only by reference to the records, they say that no funds were received by them belonging to the Wichita Royalty Company; that the payment of the check of $5060.00 was in part payment of the sale by Harrell and Basham to the Wichita Royalty Company of the Stephens Royalty, and that the payment by W. H. Peckham to the Bank was from his own personal account and personal funds, and these defendants further plead in reply to paragraph 23 of the cross-complainants' action against the City National Bank of Wichita Falls, et al., set forth in paragraph 24 of said answer, in reply to this paragraph XVII, and deny that any sum was received by these defendants, or by their Bank upon any personal indebtedness owed by G. W. Peckham, which consisted of trust funds.

XIX.

Replying to paragraph XVIII, these defendants deny that the Marlborough property affairs were handled and administered by Harrell and Peckham. They say that after Peckham purchased W. H. Peckham's interest, that J. T. Harrell and J. A. Kemp continued as joint owners, and the Marlborough properties were handled by Peckham; Harrell and Kemp acting only in an advisory capacity.

281 XX.

Answering paragraph XIX, these defendants admit that Peckham had funds; as to whether they were large

funds or not, at his disposal, this term is a relative term, and they also admit that the purchase price for the balance of the property known as the Marlborough Addition required the expenditure of substantial sums of money and that the defendant, J. T. Harrell, concurrently and promptly paid his pro rata part thereof, and that as to whether G. W. Peckham was unable to pay his part thereof or not, these defendants do not admit or deny. They say that they were not aware of the fact at any time until after the death of G. W. Peckham that the Wichita Royalty Company actually owned one-half of said property.

XXI.

Answering paragraph XX, these defendants say that the Marlborough properties were actually owned (which fact was unknown to them) by the Royalty Company, which fact Scannell well knew as the deed had been delivered to him. In this connection, these defendants deny that the transfers as alleged were made so that Peckham could pay his private debts to J. T. Harrell or the Bank.

XXII.

Answering paragraph XXI, these defendants are without information to say whether the sum of $57,219.44 is a correct statement of the amount of said checks, but say that substantial sums were necessary for the purchase price for the interest in the Marlborough Addition owned by the Wichita Royalty Company, and that said Company never paid any more than its pro rata part,
and in as much as J. T. Harrell and J. A. Kemp
282 paid at all times their pro rata part of the indebtedness due thereon, they believed that Peckham was the owner of the other one-half interest in the property, and it later developed that it was owned by the Wichita Royalty Company (that is, after Peck-

ham's death) and the funds were, therefore, rightfully expended, and that there was a true and valuable consideration moving to the Wichita Royalty Company for such expenditure, it being the actual owner of one-half interest in said property, all of which fact was well known to E. E. Scannell, as well as G. W. Peckham, but unknown to the defendant, J. T. Harrell; that J. T. Harrell had no knowledge of any wrongful or unauthorized expenditure of the funds of the Wichita Royalty Company in said connection, and owed no duty to supervise Peckham's conduct as trustee of the Wichita Royalty Company, and these defendants deny that J. T. Harrell ever loaned substantial sums of money to the Wichita Royalty Company in order that G. W. Peckham might obtain the same, by transfer thereof to his private account.

XXIII.

Answering paragraph XXII, these defendants say:

These defendants deny that G. W. Peckham with the knowledge, consent and active participation on the part of the defendant, J. T. Harrell, made a profit out of the sale by Harrell and Basham to the Wichita Royalty Company of the Stephens Royalty, and from the proceeds of a loan made by Harrell on behalf of the Bank, and that Harrell was paid any part of the money above set out. These defendants say that they have fully set forth the transactions concerning the Stephens Royalty Company in their answer to the cross action against the City National Bank of Wichita Falls, and in paragraphs 24 and 25 of said answer, and adopt the same in reply to this paragraph.

283 XXIV.

Answering paragraph XXIII, these defendants deny that G. W. Peckham, as Trustee of Wichita Royalty Company, withdrew the trust account and applied the sum

of $200,000.00 to unauthorized purposes, or that the records of the Bank show such matters, and deny that G. W. Peckham accomplished any mis-appropriations through the facilities of the City National Bank of Wichita Falls, and the defendant, J. T. Harrell, with knowledge and notice possessed by Harrell of such fact. They deny in toto the allegations contained in paragraph XXIII aforesaid. That Harrell never cooperated with Peckham in respect to the matters therein alleged; in fact, he knew nothing about Peckham's checks as trustee of the Wichita Royalty Company on said Bank; he never inspected the checks or withdrawals; he was an executive officer of said Bank; the duty of paying the checks devolved upon the teller of the Bank and that all the checks that were paid were paid upon the genuine signatures of either G. W. Peckham, or E. E. Scannell, both of whom had authority to draw checks upon the account of the Wichita Royalty Company, and that the defendant, Harrell, never had any knowledge or suspicion that Peckham was committing any breach of trust in respect to the withdrawal of such funds.

XXV.

In reply to paragraph XXIV, these defendants admit that the Texas Investment Company was created as a corporation to take over the properties and assets of the Marlborough Addition; that the charger was drawn and prepared before the death of G. W. Peckham, who signed the same as one of the joint owners; they deny that the corporation was dissolved, say that the fact that it failed to pay its franchise tax did not show a dissolution, but that the franchise tax due the State of Texas has been paid in full, and said corporation is in good standing.

284 XXVI.

The defendants deny that the Wichita Royalty Company holds title to property actually owned by G. W.

Peckham against which it has a lien; but the property is held by the Wichita Royalty Company or owned by it; that Scannell knew of it, and all the times inquired about. He accepted the property after he became substitute trustee, and that the Wichita Royalty Company is the owner and not the lienholder of said property; and since the Wichita Royalty Company is the owner and has held said property since it acquired the same, using the proceeds therefrom, is therefore estopped to deny that it holds the same only as a lienholder, or that either J. T. Harrell or the Bank is liable to the Wichita Royalty Company for the purchase price and investment of said properties.

The defendants deny that any necessity exists for an accounting between the parties, or that each party should state an account, and deny that either of these defendants has ever received any trust money of the Wichita Royalty Company, or is indebted to it in any sum whatsoever.

XXVII.

These defendants in reply to paragraph XXVI, say they deny that the law of the case has been fixed and determined by the decision of the Supreme Court of Texas, as set down in the mandate on file herein.

XXVIII.

By way of affirmative defense, these defendants, especially J. T. Harrell, say in respect to each and all the items both prior to 1925 and subsequent thereto, that all of such transactions were known to the Wichita Royalty Company and its active officers; that G. W.
285 Peckham was the sole representative of the Wichita Royalty Company (except E. E. Scannell, who kept the books and was secretary-treasurer thereof) and that such information as G. W. Peckham had was therefore imputed to the said shareholders, and that said shareholders had such information at hand, or

by the use of ordinary diligence could have discovered each and all the facts which they now allege, more than two years prior to the filing of its cross-petition herein and these defendants, especially the defendant, J. T. Harrell, here and now assert that said claim is barred by the two year statute of limitation, and that said statute of limitation bars any right which the cross-complainant, Wichita Royalty Company, and E. E. Scannell, its trustee, may now have herein.

These defendants, and especially the defendant, J. T. Harrell, further plead that all the facts hereinabove alleged were known, or could by the use of ordinary diligence, have been known to the Wichita Royalty Company, its officers and shareholders, more than four years prior to the filing of this suit. There was no concealment of any kind on the part of J. T. Harrell or the other defendants, and these defendants plead the bar of the four year statute, and say that this suit was not filed within four years from the time the cause of action accrued, and that such claim, if any, the said cross-complainants ever had is barred by said statute.

These defendants further say that the facts asserted by the Wichita Royalty Company occurred during the lifetime of G. W. Peckham; that the Wichita Royalty Company and its officers and members thereof, prior to the death of G. W. Peckham, knew all the facts now alleged as a cause of action against these defendants, or had sufficient information and knowledge that
286 by the use of ordinary diligence they could have discovered each and all the facts which they now allege and assert, prior to the death of G. W. Peckham; that these defendants, especially J. T. Harrell, are guilty of no concealment and no misrepresentation to prevent the Wichita Royalty Company from discovering such facts, and that since the death of G. W. Peckham which occurred in November, 1929, these defendants are not in position to have the explanation of G. W. Peckham explaining each and all of said items now charged by

the Wichita Royalty Company against G. W. Peckham were divers and numerous, and that had G. W. Peckham lived and this lawsuit brought during his lifetime, these defendants would have had the benefit of such explanations and evidence that G. W. Peckham possessed; therefore, the Wichita Royalty Company is guilty of laches and stale demand in failing to bring this lawsuit or to assert its purposed cause of action during the lifetime of G. W. Peckham.

All the facts as hereinbefore alleged, which are made the basis of this suit were known by the Wichita Royalty Company and its constituent members; they had knowledge of these facts, or had sufficient knowledge and notice that a reasonable inquiry would have given them knowledge of all the facts, and it was their duty, having placed G. W. Peckham in charge of its affairs, to have obtained such knowledge and had such knowledge, and, had such suit been brought within the lifetime of G. W. Peckham, these defendants would have, as aforesaid, had the benefit of such explanations and reasons that the deceased G. W. Peckham had, and by the failure of the Wichita Royalty Company, and its substitute trustee, to assert its cause of action during the lifetime of Peckham, it is now forever estopped to assert by reason of the equitable doctrine of laches and stale demand, which these defendants plead, in addition to limitation in bar of cross-complainants' right to recover herein.

Wherefore, premises considered, these defend-
287 ants pray that the cross complainants take nothing against them and that the cross bill be dismissed.

T. R. BOONE,
Attorney for J. T. Harrell.
WEEKS & MORROW,
BULLINGTON, HUMPHREY & KING,
Attorneys for Texas Investment Company.

The State of Texas,
County of Wichita.

Before me, the undersigned authority, on this day personally appeared J. T. Harrell, individually, and E. A. Deaton, President of the Texas Investment Company, a corporation, who being by me duly sworn upon their oaths, depose and say that they have each read over the foregoing answer and that the facts set forth therein are true and correct.

Witness our hands this 22nd day of December, A. D. 1936.

J. T. HARRELL.
E. A. DEATON.

Subscribed and sworn to before me, this 22nd day of December, A. D. 1936.

L. A. WARD,
(Seal) Notary Public, Wichita County, Texas.

CITY NATIONAL BANK OF WICHITA FALLS, ET ALS' ANSWER TO THE CROSS BILL OF THE WICHITA ROYALTY COMPANY.

Filed December 21, 1936.

288 (Title Omitted.)

The interpleaded defendants, City National Bank in Wichita Falls, a national banking association, J. T. Harrell, Trustee, L. H. Cullum, J. T. Harrell, Leslie Humphrey, Jack Jeffus, Oral Jones, Frank Kell, Joe Kell, J. J. Perkins, C. V. Snider, F. P. Timberlake, Texas Investment Company, a corporation duly incorporated, together with the City National Bank of Wichita Falls, E. A. Deaton, Liquidating Agent of the City National Bank of

Wichita Falls, come now and answer the cross-complaints of the Wichita Royalty Company and E. E. Scannell, its Trustee, and for such answer plead as follows:

I.

By way of affirmative plea in bar of said respective cross bills against the defendants, City National Bank of Wichita Falls, J. T. Harrell, Trustee, and E. A. Deaton, Liquidating Agent, and of W. H. Peckham, Administrator of the Estate of G. W. Peckham, Deceased, Hazel Peckham, William Peckham, George Peckham, and Robert Peckham, surviving wife and children of G. W. Peckham, deceased, and the Texas Investment Company, a corporation duly incorporated, as well as the cross-complaint against the City National Bank in Wichita Falls, J. T. Harrell, Trustee, Leslie Humphrey, L. H. Cullum, J. T. Harrell, Jack Jeffus, Oral Jones, Frank Kell,
289 Joe Kell, J. J. Perkins, C. W. Snider, and F. P. Timberlake, interpleaded defendants, as well as the cross-complaint against J. T. Harrell, W. H. Peckham, administrator of the estate of G. W. Peckham, deceased, Hazel D. Peckham, Robert Peckham, William Peckham, and George Peckham, surviving wife and children of G. W. Peckham, deceased, and the Texas Investment Company, a corporation, these defendants respectfully say that said cross-complaints show and appear on their face to be an action for debt against the respective defendants by virtue of the wrongful transfer of funds by G. W. Peckham while trustee of the Wichita Royalty Company from the account of the Wichita Royalty Company to the individual account of G. W. Peckham, and the wrongful expenditure of such funds. The liability against the City National Bank of Wichita Falls arises by an alleged wrongful participation and knowledge of such transfers. The respective cross bills affirmatively show that the primary liability is that of the estate of G. W. Peckham and that, as between the estate of G. W. Peck-

ham and the remaining interpleaded defendants, the relationship is that of principal and surety. Said pleadings further show affirmatively that the major portion of the items sued for were occasioned by the alleged sale of properties by G. W. Peckham while he was trustee of the Wichita Royalty Company from himself individually to himself as such trustee. The cross-complaints further show affirmatively that the Wichita Royalty Company has held, claimed, and received the proceeds from said respective royalties from the time of said transfers by Peckham to the Royalty Company up to this time, for a period in some instances of as long as fifteen years, and that it continued to hold said properties and receive the proceeds therefrom after the filing of this suit.

290 W. H. Peckham, soon after the death of G. W. Peckham, was appointed administrator of the estate of G. W. Peckham, deceased. He qualified as such in the probate Court of Wichita County, Texas, and has at all times been acting as administrator of the estate of G. W. Peckham, deceased. After the death of G. W. Peckham, deceased, and after the appointment of E. E. Scannell as substitute trustee in lieu of G. W. Peckham, deceased, said substitute trustee (who had signed most of the checks complained of as secretary and treasurer of said company) made, filed, and presented his affidavit on behalf of the Wichita Royalty Company of a claim against the estate of G. W. Peckham. Said claim was presented to the administrator of the estate of G. W. Peckham on or about the 16th day of December, A. D. 1930, and was for the principal sum of $19,828.67, a copy of which claim is attached to this answer, marked Exhibit "A," and made a part hereof. That said claim, though presented, was never allowed by the administrator of the estate of G. W. Peckham, deceased, and no other claim for any other such has ever been presented by the Wichita Royalty Company or its trustee to W. H. Peckham, administrator of the estate of G. W. Peckham, deceased.

It is required under the laws of the State of Texas that before any claim against a deceased person can be sued upon or reduced to judgment that such claim must first be presented to the administrator of such deceased person, and, if disallowed or if no action is taken thereon by said administrator, suit must thereupon be brought within ninety days after the rejection of such claim and not thereafter; that no suit was ever filed upon any rejected claim and no claim was ever approved in this matter against the estate of G. W. Peckham, and the liability, if any, of the other defendants being a secondary liability, the law would require first that the claim and indebtedness be reduced to judgment against the
291 primary obligor, and that, had an election been made by Scannell as trustee to rescind such sales as he now alleges to be fraudulent at the time he became trustee, or within a reasonable time thereafter, the effect of such election, if the election was justified, would be to place the properties so purchased in the ownership of the estate of G. W. Peckham and a claim against the estate of G. W. Peckham, established in accordance with the law, would have been collectible, but the cross-complainants failed to elect but continued to hold said properties, to receive and dissipate the proceeds therefrom in the prosecution of this action and otherwise until such properties have become depleted and worthless, or at least many of them have so become.

Wherefore, these interpleaded defendants say that the failure of E. E. Scannell to make an election at the time he qualified as substitute trustee, or within a reasonable time thereafter, and to file his claim and establish the same in a legal and proper manner against the estate of G. W. Peckham, deceased, has barred his rights to a recovery against any of the interpleaded defendants, including the plaintiff, City National Bank of Wichita Falls, and J. T. Harrell.

II.

By way of further affirmative plea, these defendants respectfully shows that the items sued upon are based upon transfers made by G. W. Peckham while trustee of the Wichita Royalty Company upon checks duly drawn upon the plaintiff bank beginning as far back as A. D. 1923 and continuing up to the time of the death of G. W. Peckham, deceased, in the fall of 1929. The suit is based upon an alleged deposit liability and said suit is barred as to all items sued for, for the reason that the said cross-
complainants are guilty of laches in making any
292 demand for such liability. This defense is applicable not only to the items originally sued for in the first cross-complaint filed in April, A. D. 1931, but is applicable to those additional items sued for in the cross-complaints filed herein on December 12, A. D. 1936, which latter cross-complaints include also the items sued for in the original cross-complaint filed in 1931.

In this connection these defendants respectfully show that upon all of the items and transactions made the basis of liability herein, by way of transfers of funds from the deposit account of the Wichita Royalty Company to the deposit account of G. W. Peckham individually, such transfers were made upon checks drawn and duly signed by E. E. Scannell or G. W. Peckham, both of whom were authorized to draw checks upon the account of the Wichita Royalty Company; that said checks were returned each month to G. W. Peckham or E. E. Scannell, who was acting as secretary and treasurer of said company, together with a statement of said bank showing the deposit balance of the Wichita Royalty Company and showing a debit against said deposit balance by reason of such checks, and said statements, together with the returned checks, affirmatively showed that the plaintiff bank recognized no deposit liability remaining after such checks had been cashed, and that after the death of G. W. Peckham E. E. Scannell made a full and thorough investi-

gation of the books and records of the plaintiff bank and ascertained that the said bank recognized no deposit liability by reason of the withdrawals aforesaid, and that the said E. E. Scannell as trustee had possession of such facts as amounted to a demand and refusal on the part of the bank to recognize or pay anything in addition to what such monthly statements showed was the deposit liability of the Wichita Royalty Company. Said bank repeatedly rendered to the said cross-com-
293 plainant an account which affirmatively showed that said bank claimed the funds now charged to be on deposit had been withdrawn from said account, and that such notice was given to the cross-complainant more than four years and more than two years prior to the filing of any suit against the interpleaded defendants, including the plaintiff bank herein.

That in April, A. D. 1931, the cross-complainant filed a cross bill and petition against the plaintiff bank, claiming a deposit liability for certain items set forth in said original cross-complaint, but which did not include any items prior to October 8, 1925, and said original cross-complaint alleged a demand for a deposit liability of approximately $80,000 and alleged a refusal of the bank to pay such sum, and prayed for judgment thereon.

Wherefore, the recovery upon all items prior to October 8, A. D. 1925, is barred and the said cross-complainants are guilty of laches and such delay as will forever bar them from recovery upon any of said items.

These interpleaded defendants, as well as the City National Bank of Wichita Falls and J. T. Harrell, further show that the properties involved are oil properties; that at all of the times from the date of the original purchase and sale to the Wichita Royalty Company to the present time they had and have a highly fluctuating and speculative value. An instance of such value is shown by the pleadings herein, with reference to the Wheeler and Gray County royalties. In the original cross-complaint filed

the Wichita Royalty Company elected to rescind the purchase of the Wheeler and Gray County royalties and to recover from the plaintiff bank the purchase price thereof in the amount of $10,000. That at said time the properties had no substantial value, or at least were not producing properties; that since said election oil has been discovered on said royalties and from the time
294 of the filing of the original cross bill and complaint by the Wichita Royalty Company to the time of the filing of the amended cross bill and complaint of the Wichita Royalty Company the said Wheeler and Gray County royalties have become valuable, worth much in excess of the sum of $10,000, and the cross-complainant has withdrawn its election and now seeks to hold the same, and has omitted said item of $10,000 from its alleged indebtedness. This is but an instance showing the fluctuating nature of said properties. It was the duty of the Wichita Royalty Company and its trustee to act promptly, to make its demand promptly, and, having failed to do so, said cross-complainant Wichita Royalty Company is barred from any recovery herein by reason of the equitable doctrine of laches, limitation, and stale demand, which defenses these interpleaded defendants, including the City National Bank of Wichita Falls and J. T. Harrell, specially plead in bar of the cross-complainants' right to recover herein.

III.

Answering separately the cross-complaint of the Wichita Royalty Company and E. E. Scannell, its trustee, against the City National Bank of Wichita Falls; J. T. Harrell, Trustee; E. A. Deaton, Liquidating Agent; W. H. Peckham, administrator of the estate of G. W. Peckham, deceased; Hazel Peckham, William Peckham, George Peckham, Robert Peckham, and the Texas Investment Company, a corporation, these defendants say:

In reply to the motion to remand, set forth in said cross bill, these defendants say that this suit involves the wind-

ing up of the affairs of a national bank and arises under the Constitution and laws of the United States, and that a motion to remand has already been duly overruled.

295 IV.

Answering paragraph number III of said cross-complaint, these defendants say that the Wichita Royalty Company is a trust estate operating under a declaration of trust, but that the trustee has unlimited power to deal with the properties of said trust and his dealings are not confined solely to oil and gas royalties and other oil and gas properties, neither does it require the title to all properties to be held in the name of the trustee as such, but that such declaration of trust and articles creating such association give to the trustee the widest discretion, free from the control of the shareholders, in making all manner and form and kind of investments.

V.

Answering paragraph number IV, these defendants admit the allegations in said paragraph.

VI.

Answering paragraph number V, these defendants admit that the City National Bank of Wichita Falls is a national banking association organized and created under the laws of the United States, but that it is now in liquidation. It admits that J. T. Harrell is its president and that he has been an executive officer of said bank at the times therein mentioned; that a portion of the time he was not president, however, but active vice-president.

VII.

Answering paragraph number VI, these defendants admit that E. A. Deaton is the Liquidating Agent of said plaintiff bank, pursuant to appointment and qualification

as required under the laws of the United States of America governing the liquidation of national banks.

VIII.

In reply to paragraph number VII, these defendants deny that J. T. Harrell was placed in possession of all of the assets of the plaintiff bank, but that he
296 was placed in possession of only such of said assets as were not sold outright and assigned, transferred, and delivered to the City National Bank in Wichita Falls, and that only as to such remaining assets is he trustee and that he is trustee under a pledge of such remaining assets for an indebtedness of approximately $189,000 owing by the City National Bank of Wichita Falls to the City National Bank in Wichita Falls.

IX.

Answering paragraph number VIII, these defendants admit that W. H. Peckham is administrator of the estate of G. W. Peckham, deceased, and that the other Peckhams named in said paragraph number VIII are the surviving heirs at law of G. W. Peckham, deceased, and that their respective residence is as alleged. They deny that the Texas Investment Company is a dissolved corporation, but they say that the Texas Investment Company is a corporation duly incorporated, in good standing, and is incorporated under the laws of the State of Texas.

X.

In reply to paragraph number IX, these defendants admit that all of the parties to this controversy, except Hazel D. Peckham, William Peckham, and George Peckham, are citizens of the State of Texas; that the last-named parties are citizens of the State of Colorado. They

deny that the rights of the parties with respect to the matters herein involved are determinable by an application of the laws of the State of Texas, but say that the matters herein involved are determinable by the general law and by the laws of the United States of America, in that the matters involved are the winding up of the affairs of a national bank and the construction of the statutes and laws of the United States.

297 XI.

Defendants admit paragraph number X of said cross-complaint.

XII.

In reply to paragraph number XI, these defendants deny the allegations therein contained and say that there is no deposit liability owing by the plaintiff bank to the Wichita Royalty Company. They further say that the allegations in said paragraph number XI are too general upon which to predicate any liability and that the same should therefore be stricken.

XIII.

In reply to paragraph number XII, these defendants deny the allegations in said paragraph and deny that they knew each and every fact pleaded or were charged by law with the knowledge thereof. They say that G. W. Peckham and E. E. Scannell both had authority to draw checks upon the account of the Wichita Royalty Company and under the law the plaintiff bank was charged with the duty of honoring such checks. That it did not know and had no right to assume that the trustee or the secretary and treasurer of said company, Scannell, was wrongfully withdrawing funds from the account of the Wichita Royalty Company.

XIV.

In reply to paragraph number XIII of said cross complaint, these defendants admit that the declaration of trust and articles of association was the general authority under which the trustee of the Wichita Royalty Company was acting, and that such articles and declaration of trust gave to the trustee the broadest powers and did not limit his powers solely to the purchase and sale of oil and gas royalties and other oil and gas properties, but gave him broad discretion to make any investment free from the control of the shareholders; that it did not require him to place the title to all properties in his name as trustee of the Wichita Royalty Company, or to
298 hold all funds as such trustee, and therefore these defendants deny the allegations in said paragraph number XIII.

XV.

In reply to paragraph number XIV of said cross bill, these defendants admit that G. W. Peckham during the time he was trustee was also engaged in private business and enterprise. These defendants say upon information and belief that said trustee did not use trust funds for non-trust purposes or for his personal and individual benefit, or seek to destroy the evidence of the trust title to property, and deny that he colluded with the bank's officers to accomplish a misappropriation of trust funds or to make payments to such parties upon his private debts, and deny that said bank or its officers had any knowledge of the payment by said trustee of any private debt out of trust funds. They deny that he traded and trafficked with himself as an individual and trustee and made profits personally from such dual dealings, or that they participated therein with any knowledge of the trustee's breach of trust. They deny in toto that any of the alleged peculations of G. W. Peckham were known to the bank or its officers, or that they were charged with such knowl-

edge, or that the bank or its officers ever received any trust funds upon the payment of any private indebtedness owing by G. W. Peckham. They deny that there was any participation on the part of the bank, its officers and agents, with G. W. Peckham in despoiling the trust or its funds. They say that at all times during the trusteeship of G. W. Peckham they believed him to be an honest and faithful fiduciary. That such was his record as a citizen and in his dealings with said bank, and that said bank and its officers had the right to assume and presume that the transfer of funds upon the authorized check of G. W. Peckham or E. E. Scannell, from the
299 account of the Wichita Royalty Company to the individual account of G. W. Peckham, was for a rightful purpose and they had no right to suspect the said G. W. Peckham of thieving; that the law imposes no such duty upon the officials, agents, or employees of a bank with reference to the accounts of its customers.

XVI.

Answering paragraph number XV, these defendants say that if said checks were all upon the voucher form it was intended that the voucher should be detached before the check was cashed, which was done, and that the vouchers were merely a memorandum for the convenience and benefit of the Wichita Royalty Company and its trustee, and was not notice to the bank of the purposes for which said checks were drawn and the bank would not therefore be bound by any notation or written memorandum contained in said vouchers; that said voucher contains a printed statement thereon, "detach here before depositing check," and contains a perforation between it and the check, clearly showing that it was not intended to be any notice to the bank of what the voucher contained.

XVII.

Answering paragraph number XVI of said cross bill, these defendants say that they are without knowledge as

to the checks mentioned in said paragraph, as to whether they were deposited in the personal account of the drawing trustee, but do say that many checks were drawn during the six and one-half years that G. W. Peckham was trustee upon the account of the Royalty Company and the funds were transferred to the individual account of G. W. Peckham, but that the bank believed and it had a right to assume that said transfers were regular and valid; that they did not know that said money
300 was being improperly diverted from the trust account to the personal account of the trustee to be used for the personal benefit of said trustee; that it assumed that said trustee would rightfully disburse the funds and it was not charged with any duty to act as a co-trustee or super-trustee in the handling of the Wichita Royalty Company account. It was guardian only of the deposit, not of the depositor. Its duty was to safely keep the money until withdrawn upon the proper order of one authorized to sign checks, and this it did.

XVIII.

Answering paragraph XVII, these defendants admit that the list of checks shown in said paragraph XVII is a correct list of checks drawn upon the account of the Wichita Royalty Company; that most of said checks were signed by E. E. Scannell, who was the secretary and treasurer of the said Wichita Royalty Company, but who was authorized to sign checks and withdraw funds from the account of the Wichita Royalty Company. These defendants deny that said checks, or any of them, was an accomplished misappropriation of trust funds by the trustee. They say upon information and belief that said checks were rightfully drawn upon said account of the Wichita Royalty Company for the purchase of properties, made by G. W. Peckham for said Royalty Company or the payment of indebtedness due by said company. That each and every item mentioned and described

in said paragraph XVII was a proper expenditure of monies of the Wichita Royalty Company by the trustee; that said checks, and each of them, were debited to the deposit account of the Wichita Royalty Company; that they were returned each month to the Wichita Royalty Company, showing to have been paid and charged to the account of the Wichita Royalty Company, together with a statement showing the withdrawals and
301 deposits and the bank balance at the close of each month, after crediting such checks to the Wichita Royalty Company; that E. E. Scannell, who was then secretary and treasurer of the Wichita Royalty Company, received said checks; that the said Wichita Royalty Company has retained said checks and the bank statements showing that said checks were paid from the deposit account of the Wichita Royalty Company from the time the first one was drawn on October 8, 1925, up until the filing of this suit, which was filed for the first time in April, 1931, more than two years and more than four years after most of said checks had been signed, cashed, and returned to the cross-complainant; that said checks represented the purchase of oil properties in the main and that the said cross-complainants delayed more than two years to bring any action in connection with said checks, or the withdrawal of said funds, and that their claim by reason thereof is barred and they are precluded from recovery under the equitable doctrine of laches and stale demand, which these defendants plead in bar of such recovery. In this connection, these defendants deny any participation with the trustee in the transfer of such funds. They say that the bank and its officers believed that said funds were rightfully being withdrawn and were rightfully used for a proper and legitimate purpose, and the law creates no implication to the contrary.

XIX.

Answering paragraph XVIII of said cross bill, these defendants say that said paragraph affirmatively shows that

the sums represented by the sale of the two royalties therein described were never deposited to the credit of the Wichita Royalty Company. They say that the defendant bank herein and its officers had no knowledge of the nature of such deposits; that it accepted said deposits in the ordinary course and custom of banking,
302 without any knowledge of the trust character of such funds or any misappropriation or intended misappropriation thereof by G. W. Peckham, Trustee.

XX.

Answering paragraph XIX, these defendants deny that the bank received from G. W. Peckham upon payments of his personal indebtedness the sum of $57,764.21 from funds transferred from the Wichita Royalty Company's account. These defendants do admit that G. W. Peckham paid to the bank during this period of time $57,770.21; that said payments were made upon funds belonging to G. W. Peckham and that during this period of time G. W. Peckham deposited with the plaintiff bank $1,683,000, of which amount not more than 11% were deposits from a transfer of funds from the account of Wichita Royalty Company. The bank was not charged with the duty of inspecting the cross-entries to determine what Peckham did with the money. The presumption of honest dealing afforded the bank protection in handling fiduciary accounts. It was not its duty to supervise such accounts in respect to the honesty of the trustee. These defendants deny that said payments would not have been made except by reason of transfers of funds from the Royalty Company account to Peckham's individual account, or that Peckham diverted such funds for the purpose of making such payments or that the bank had any knowledge thereof.

XXI.

Answering paragraph XX, these defendants say that the perforations on said checks and the notation on the

back thereof did not require the bank to make an investigation as to the purpose for which the said checks were given, or to institute an inquiry as to whether or not the trustee was acting within the scope of his authority, or was about to effect a misappropriation of such funds.

303 In this connection they say that most of the checks were signed by E. E. Scannell; that he was the secretary and treasurer of the company, advertised as such, had charge of the office books and accounts, was an accountant experienced in the handling of books and records and keeping accounts; that he signed the checks, he wrote the vouchers, he kept the books, and the checks were returned to him showing that they had been debited to the Royalty Company's account; that the vouchers which originally accompanied the checks showed the purpose for which the funds were withdrawn; that Scannell made out the vouchers, kept a duplicate in his office of the same, and, even if the bank had any suspicion as to the integrity or honesty of G. W. Peckham, this method afforded it a double assurance that the funds were being properly handled; that Peckham and Scannell were the only executives of the Wichita Royalty Company; that it had no other officers in this country; that its stockholders were widely scattered, residents of other states, and this bank could not and it was not called upon to set up a jus tertii in respect to said deposits and transfers; that it never knew who the stockholders are or were and Scannell now refuses to disclose who they are and it had no way of checking up on or advising the stockholders, even if such was its duty, as to the intended misuse of such funds.

XXII.

Answering paragraph XXI, these defendants say that it was not the duty of the bank to examine the status of the personal account of G. W. Peckham at the time the deposits in question were made. These defendants say

that it is true that Peckham at times was indebted in large sums to the plaintiff bank; that he was a man of large affairs, handled substantial sums of money, his credit was good, and he was highly regarded in
304 this vicinity as a man of integrity and honor.

XXIII.

Answering paragraph XXII, these defendants admit that J. T. Harrell was one of the executive officers of the bank; that said bank had other officers and it was managed by a board of directors; that it had a discount committee composed of the active officers of said bank and generally two outside directors who passed upon all loans; that the loan to G. W. Peckham was passed upon and made in the usual and customary manner in which commercial banks extended loans and there was nothing unusual in the loaning of money by a bank to G. W. Peckham at said time; that he was highly regarded both in a financial way and for honor and integrity.

These defendants further allege that they are without knowledge as to what loans the cross-complainant refers to in said paragraph XXII, but says that the loans made to the Wichita Royalty Company, the renewal of which is the indebtedness herein sued upon, was deposited to the credit of the Wichita Royalty Company and withdrawn upon the proper signature of the trustee or officer authorized to sign checks and withdraw funds, and these defendants deny that said trust fund was diverted to the personal account of the trustee, so that he might or did pay to the loaning banker a personal debt, or so that the loaning banker might or did pay to the bank his private debt, or so that the bank might or did receive from a portion of such trust funds a payment upon the private debt of W. H. Peckham or upon the private debt of G. W. Peckham. These defendants deny the facts as pleaded in said paragraph XXII. They say, however,

that if such facts as pleaded are true that such would not effect any notice to the defendant bank of the wrongful use by Peckham of the funds in question. If
305 such a corrupt statement of facts existed, which these defendants deny in toto, they say that the bank would not be charged with knowledge by reason of such use of the funds.

XXIV.

In reply to paragraph XXIII of said cross bill, these defendants admit that G. W. Peckham and J. T. Harrell were good friends. They say that they were business associates only in respect to a joint ownership in certain city town lots known as the Marlborough Addition; that J. T. Harrell purchased an undivided one-fourth interest in said lots along with J. A. Kemp, now deceased, W. H. Peckham, and G. W. Peckham; that at the time of the purchase the properties had a prospective value for a town-lot subdivision; that neither Harrell nor Kemp participated in the management of said enterprise, but, having confidence in the integrity and business judgment of G. W. Peckham, trusted to him to handle the subdivision, improvement, and sale of said addition; that at no time did either Harrell or Kemp—until after the death of G. W. Peckham—have any actual knowledge that G. W. Peckham had sold and assigned to the Wichita Royalty Company the interest in said Marlborough Addition formerly belonging to G. W. Peckham and his brother, W. H. Peckham. They did know, however, that G. W. Peckham had acquired individually the interest of W. H. Peckham. They admit that G. W. Peckham was trustee. They say that J. T. Harrell was one of the chief active officers of the plaintiff bank. He would not probably have been called the chief active officer of said bank.

That, likewise, Harrell and Peckham and C. E. Basham were joint owners in a small farm near Wichita Falls known as the Curlee tract. These defendants deny that

they were the joint owners of a producing royalty known as the Stephens Royalty, in Wilbarger County,
306 Texas,—at least except for only a very short period of time. Harrell and Basham each owned an undivided one-fourth interest in a producing royalty in Wilbarger County, Texas. It was a valuable royalty and in the fall of 1925 they sold a one-fourth interest in said royalty to G. W. Peckham. This sale was made for a consideration of $30,000.00 paid by G. W. Peckham, who in turn sold the same to the United Royalties. A few months later Harrell and Basham sold their remaining interest in said royalty to the Wichita Royalty Company, so there was no joint ownership of said royalty, except between the date of the first sale to G. W. Peckham and the date of the last sale to the Wichita Royalty Company.

As to the indebtedness owing by the defendant Harrell to the plaintiff bank and its increase thereof and the amount of indebtedness owing by G. W. Peckham to the plaintiff bank, these defendants admit that J. T. Harrell was indebted to the City National Bank of Wichita Falls in approximately the sums mentioned and that G. W. Peckham was likewise indebted to said bank for money borrowed. They likewise admit that J. T. Harrell and G. W. Peckham, together with J. A. Kemp and W. H. Peckham, were indebted to the Highland Irrigation Company upon certain notes, representing the purchase price of the Marlborough enterprise. These transactions were nothing out of the ordinary. The Highland Irrigation Company was a corporation. J. A. Kemp was a respected and leading citizen of this city; J. T. Harrell was an officer of the plaintiff bank; W. H. Peckham and G. W. Peckham were both respected citizens, responsible at said time for their obligations.

J. T. Harrell was an officer of the bank with which G. W. Peckham did at least a part of his business, probably the major part. It is not likely he would be termed

the personal banker of G. W. Peckham, as he
307 was not a banker individually, but only in a representative capacity. It is speculative as to whether or not G. W. Peckham would have told Harrell any matter or thing in respect to his business. He did not tell Harrell that he had assigned the interest in the Marlborough Addition to the Wichita Royalty Company. If Peckham was thieving, as the cross-complainants allege, it is improbable that he would have told Harrell the matters alleged. As to whether or not it was a custom or practice of bankers to inquire into the intended purpose for which loans were made is speculative. It forms no part of a cause of action against the plaintiff bank and the interpleaded defendants.

XXV.

In reply to paragraph XXIV, these defendants say that said paragraph is argumentative and contains no allegations of fact, but these defendants admit that the Wichita Royalty Company purchased the Stephens Royalty from C. E. Basham and J. T. Harrell for an agreed consideration of $20,000, plus the interest Peckham owned in the Curlee land. They deny that the value of this interest was agreed upon as $2,407. In connection with the purchase of the Stephens Royalty, these defendants say that it was a valuable royalty; that a like interest had theretofore been sold to G. W. Peckham for a larger sum only a short time before; that said royalty had many large producing oil wells on it at the time of the sale; that the Wichita Royalty Company notified its shareholders of the purchase of same in the early part of 1926. Said company held it from 1926 until after the death of G. W. Peckham. E. E. Scannell assumed ownership of it, collected the proceeds from the oil produced from it, and sold it during his tenure of office; that the royalties,
including the sale price, produced in excess of
308 the purchase price and there was nothing fraudulent or wrong in the purchase of said Stephens Royalty.

XXVI.

Answering paragraph XXV, these defendants say that they are without accurate knowledge as to the amount of Peckham's deposits on January 4, 1926, but that the allegations in said paragraph XXV do not create any liability against the plaintiff bank or the defendant Harrell; that the sum of $5,000 mentioned by check No. 452 was in payment of a legitimate purchase of royalties; that neither Harrell nor the bank would have notice of any improper use of the funds of the Wichita Royalty Company because G. W. Peckham paid the Highland Irrigation Company by check on his personal account the sum of $812. These defendants deny that from January 6th to January 11th, 1926, that Peckham's personal account consisted wholly of trust funds. They on the contrary say that at all of said times he had sufficient funds in said account belonging to him personally with which to pay all checks drawn against the same, and that the check of $2,567.75 would create no notice to the bank or Harrell of any improper use of the Royalty Company's funds, in that said check was not received by Harrell or Basham or the bank. It was an independent transaction with third persons.

XXVII.

In reply to paragraph XXVI, these defendants deny that on January 12, 1926, G. W. Peckham's personal account consisted wholly of trust funds. They say that G. W. Peckham had advanced for the purchase of the Stephens Royalty personally the purchase price therefor or the amount that had at that time been paid thereon; that the transfers of two $5,000 checks mentioned in paragraph XXV were merely the repayment to Peckham for monies that he had theretofore personally advanced and that the sum of $454.50, represented by his
309 check to the Highland Irrigation Company, was his pro rata payment of a small tract of land purchased from the Highland Irrigation Company, each of

the other joint owners making their pro rata payment at said time. It was not in payment on any joint obligation owing by J. T. Harrell and G. W. Peckham to the Marlborough partnership venture.

XXVIII.

In answer to paragraph XXVII, these defendants say that they are without sufficient knowledge or information to correctly explain the reason why the liability ledger with the bank showed a debit of $15,300 to the Wichita Royalty Company and that the individual ledger did not show a credit until the 18th of January, unless the intervening day, to-wit, January 17th, was a banking holiday or Sunday, and they charge upon information and belief that the loan was made to the Wichita Royalty Company on January 16th and that the liability ledger and records of the bank reflected the loan at the time the note was executed, and that said transaction probably occurred after banking hours on January 16th. The next day being a holiday, or Sunday, the transaction was not referred to the bookkeeper having charge of the individual ledger accounts until January 18th.

XXIX.

In reply to paragraph XXVIII, these defendants say that the check of $2,201.32 was monies advanced by Peckham individually upon the purchase price of the Stephens Royalty, the title to which was acquired by the Wichita Royalty Company. There was no misapplication or wrongful use of the funds in said respect, for the reason that the Wichita Royalty Company was the owner of the property, acquired as a result of the advancement of said sum of $2,201.32, and that there was no sum paid on said amount from trust funds.

310 XXX.

In reply to paragraph XXIX, these defendants say that the sum of $15,769.07 transferred by check No. 461 was

part payment of the Stephens Royalty acquired by the Wichita Royalty Company from J. T. Harrell and C. E. Basham. These defendants are without knowledge as to the time when the records of the Wichita Royalty Company showed the purchase of this royalty, as Scannell, the present trustee, kept the records, but they deny that the personal balance at the close of business on January 18, 1926, of G. W. Peckham, of $18,765.87, consisted wholly of trust funds.

XXXI.

In reply to paragraph XXX, of said cross bill, these defendants say that the payment of the check of $10,-028 on January 25th to J. T. Harrell and C. E. Basham was an advancement or payment by G. W. Peckham on the one-fourth of one-eighth producing royalty sold by J. T. Harrell and C. E. Basham to the Wichita Royalty Company, and that each of the sellers received one-half thereof as alleged. These defendants say that they do not have accurate information as to the exact amount of Harrell's deposit balance at said time with said bank, or his personal liability to the bank for money borrowed, but say that the producing royalty sold by Harrell and Basham to the Royalty Company belonged to them individually and not the bank; that they had the right to the profits received therefrom and that the payment by Harrell to the bank on his personal debt was from his own funds and not from the Wichita Royalty Company's funds, and there is nothing in the transaction that charges the bank with any knowledge or notice that Peckham was misusing funds of the trust, or that Harrell was participating in such misuse, even if the inferences from the allegations that Harrell and Peckham collaborated, conspired, and colluded together to so use the trust
311 funds that Peckham could pay his personal debt to Harrell and that Harrell could pay his personal debt to the bank, such transactions would not charge the bank with Harrell's knowledge, and, while these de-

fendants deny that such happened, they say that upon the pleadings and allegations of the cross bill of the cross-complainants herein in respect to said paragraph no liability is shown against said bank.

XXXII.

In reply to paragraph XXXI, of said cross bill, these defendants deny that the consideration for the one-fourth of the one-eighth royalty known as the Stephens Royalty, sold and conveyed by J. T. Harrell and C. E. Basham to the Wichita Royalty Company, was $20,000, plus Peckham's personal interest in the Curlee land of $2,407, but say that the true consideration paid to J. T. Harrell and C. E. Basham was the cash sum of $22,201.32, plus the interest of G. W. Peckham in the Curlee land, which interest was of the reasonable, fair value of $3,567.75, making a total of $25,769.07, which was the exact amount that the Royalty Company advanced and paid.

That the allegations as to the former testimony of J. T. Harrell should be stricken, as they are not relevant or form any basis of a statement of fact, and is an improper pleading in an equity case.

XXXIII.

Answering paragraph XXXII, these defendants deny that the effect of the transactions is as alleged in said paragraph in respect to the Stephens Royalty transaction. These defendants say that at the time and prior to the transactio s alleged J. T. Harrell and C. E. Basham were the owners each of an undivided one-fourth interest in an undivided one-eighth of a producing royalty in Wilbarger County, Texas, designated herein
312 as the Stephens Royalty. That they had theretofore owned an additional one-fourth each in said one-eighth royalty and had a few weeks prior there-

to sold to G. W. Peckham individually, or for some customer which Peckham represented, said one-fourth royalty for a cash consideration of $30,000, which royalty was reasonably worth in excess of such sum, and that a few weeks thereafter and prior to February 4, 1926, G. W. Peckham contracted to purchase for the Wichita Royalty Company the remaining one-fourth interest in said royalty owned by J. T. Harrell and C. E. Basham. The contract price paid to J. T. Harrell and C. E. Basham was as hereinabove alleged the sum of $22,201.32, plus the transfer to Harrell and Basham of an interest in real estate reasonably worth on the market $3,567.75; that the Wichita Royalty Company paid from its funds said sum of $25,769.07 for said royalty, which was less than the fair market value of said royalty at said time and less than Peckham had individually paid for a like interest in the royalty which he individually purchased only a few weeks prior to that time. That said royalty was a very valuable royalty. There were several producing oil wells on it, producing oil in large quantities. That the Wichita Royalty Company soon after it acquired the royalty notified all of its stockholders by letter of the acquirement of this valuable royalty. Scannell sent out the letters. That the Wichita Royalty Company held said royalty from February 4, A. D. 1926, during all the time of Peckham's trusteeship and up until the time he died, and when Scannell succeeded him he continued to hold said royalty for the use and benefit of the Wichita Royalty Company and sold it during his tenure of office, and received for the Wichita Royalty Company the proceeds from the sale thereof; that the proceeds from the oil produced from said royalty since the Wichita
313 Royalty Company acquired it, together with the sales price, far exceeded the purchase price paid by the Wichita Royalty Company, and that the said Wichita Royalty Company is in no position to complain of this transaction and no liability results against the bank, Harrell, or the estate of Peckham unless it be shown that Peckham received a private gain from the

transaction in dealing with his trust, and then only he and his estate would be liable.

Wherefore, the defendants say that the Wichita Royalty Company is estopped, by retaining the royalty, receiving the proceeds therefrom, selling the same, and using the monies received therefrom, from claiming any liability against the bank or Harrell by reason of the purchase of the Stephens Royalty.

XXXIV.

These defendants, in reply to paragraph XXXIII of said cross bill, say that the check No. 465 was for salary which was owing to G. W. Peckham from the Wichita Royalty Company. Peckham, under the declaration of trust and articles of association, was entitled to a reasonable salary, which sum of $400 was on account of such salary and was reasonable. That the check of $5,100, payable to J. T. Harrell and C. E. Basham, was a payment upon the original purchase of the Stephens Royalty, namely, upon a note given by Peckham for a deferred payment of $550 on February 13th of Peckham's personal indebtedness to the bank was made entirely from funds not transferred from the Wichita Royalty account or chargeable as trust funds; that Peckham on said date had in excess of $20,000 of unquestioned personal funds in said bank on said date.

XXXV.

In reply to paragraph XXXIV, these defendants say
that the check of $400 was merely a salary check
314 owing by the Wichita Royalty Company to
G. W. Peckham. It was not trust funds, but it was Peckham's personal funds. That the $21,000 check drawn by Peckham had nothing to do with the affairs of the Wichita Royalty Company. It was the expendi-

ture by Peckham of his individual funds for individual purposes, which he had the right to do. The statement in said paragraph XXXIV that J. T. Harrell paid the bank upon his personal indebtedness $10,000 and that the cross-complainant is unable to say what, if any, connection was had between these transactions is merely a prejudicial inference, seeking to cast a reflection upon the defendant Harrell without any supporting facts, and should be stricken as improper pleading, but in this connection these defendants say that the $10,000 payment by Harrell had no connection whatever with the purchase by Peckham for himself of properties and the payment of $21,000 therefor, and that Harrell was in nowise interested in said purchase and neither was the Royalty Company.

XXXVI.

In reply to paragraph XXXV, these defendants say that they have not sufficient knowledge upon which to admit or deny the allegations in said paragraph XXXV, except they do say that Peckham owed the bank on said date a substantial sum of money; that generally Peckham's balance to his personal account was substantial and worth while. These defendants also say that Harrell owed the bank certain sums of money and that Harrell, Peckham, and W. H. Peckham, together with J. A. Kemp, owed obligations for the purchase of the real estate known as the Marlborough Addition; that there was no fraud connected in any of the transactions; that the various loans made were the usual and customary course of banking business and no inferences should be drawn from the fact that various parties here involved were indebted for money borrowed.

315 XXXVII.

In reply to paragraph XXXVI, these defendants deny that W. H. Peckham's personal balance on March 6, 1926,

was $225.20 and consisted wholly of transferred funds, or that it was increased $17,623.70 upon trust check No. 478 drawn on and payable to the bank's order. They say that they are without sufficient information to accurately state the various accounts on said date, but that the same can be ascertained by an accountant or auditor. They allege that the payment of $5,060 to C. E. Basham and J. T. Harrell was in payment of an installment due upon the purchase of the Stephens Royalty for the Wichita Royalty Company. They say that they were at the time not charged with inspecting the source from which W. H. Peckham received the sum of $11,811.85, or from what source G. W. Peckham received the deposit of $17,623.70. They had the right to presume that said transactions were valid and proper and fairly made. They do allege, however, that on or about said date G. W. Peckham purchased for the Wichita Royalty Company a one-half interest in the Marlborough Addition; that he first acquired from W. H. Peckham a deed to a one-fourth interest in said Marlborough Addition and then conveyed to the Wichita Royalty Company an undivided one-half interest in the Marlborough Addition, delivering the deed to E. E. Scannell and instructing E. E. Scannell to cause the records of the Wichita Royalty Company to reflect the true transaction. The bank or Harrell had no notice or knowledge of this transaction and the deed was not recorded, but was delivered, as Scannell well knew. That at said time the Marlborough Addition was adjacent to a section of the city of Wichita Falls which was being highly developed as an exclusive residential section. It had a fair value and its
316 value was subject to fluctuations, dependent upon the growth and development of the city of Wichita Falls; that Scannell knew all about this transaction; that he was the only officer of the Royalty Company at Wichita Falls or in this vicinity, except the trustee, G. W. Peckham; that the Wichita Royalty Company continued to hold this property during the period from 1926 up until the time of the filing of this lawsuit

in 1930; that it maintained and occupied a position that if the city grew and the property became valuable, that is, worth more than the purchase price, it could elect to hold the same and did elect to hold the same. It became Scannell's duty when he was appointed substitute trustee in 1929, he knowing all the facts at said time, to immediately elect to rescind the transaction if there was anything improper about it, but he refused to do so. He claimed the property as the property of the Wichita Royalty Company after he qualified as trustee and informed the other joint owners, J. T. Harrell and J. A. Kemp, that G. W. Peckham during his lifetime had sold the interest formerly belonging to G. W. Peckham and W. H. Peckham to the Wichita Royalty Company. He asked for a transfer of one-half of the capital stock of a corporation which had been organized to take over said properties and one-half of the capital stock of said corporation was issued to the Wichita Royalty Company. He signed, as indorser, notes of the Texas Investment Company, which was the successor in legal title to the enterprise known as the Marlborough Addition, such signature being made along with that of J. A. Kemp and J. T. Harrell; that prior to the death of G. W. Peckham he had indorsed the notes of the Texas Investment Company. After the death of Peckham and when Scannell informed the other joint owners that the Wichita Royalty Company owned one-half of this property, and was the successor in title of G. W. Peckham and W. H. Peck-
317 ham, the bank released the indorsement of G. W. Peckham and accepted the indorsement of E. E. Scannell, as trustee of the Wichita Royalty Company. The notes were renewed from time to time, payments were made thereon, and Scannell recognized and claimed said properties as belonging to the Wichita Royalty Company up until shortly before the filing of this suit, and after the world-wide depression had apparently eliminated any values in and to said property. Scannell's actions in failing to repudiate said transaction promptly, his actions in claiming the property as the Wichita Royal-

ty Company's property, in causing the stock to issue in the name of the Wichita Royalty Company, in indorsing notes of the Texas Investment Company, a corporation, which had acquired title to said properties, and in causing the same to be renewed, and in participating in the handling and management of said properties was an election to claim said properties for the Wichita Royalty Company, which election was irrevocable, and the said cross-complainant cannot therefore in good conscience or in equity cast a loss upon a commercial bank innocent and without knowledge of any wrongdoing in the transaction.

XXXVIII.

In reply to paragraph XXXVII, these defendants deny the facts stated in said paragraph. They say that G. W. Peckham was the only person with authority to act for the Royalty Company; that the declaration of trust vested in him complete power; that there was no limitation upon his power in respect to the purchase of this property and that the trust received such benefits as would accrue from the purchase of this town lot subdivision had the enterprise proved successful, and these defendants deny that the bank had any knowledge or notice of any intended misapplication of funds by G. W. Peckham in the transfer of the deposits from the Royalty Company account to his individual account, and that the
318 law did not imply notice from such transactions and deny that the bank is liable for any misappropriation in said respect.

XXXIX.

In reply to paragraph XXXVIII, these defendants deny that any misappropriations of funds of the Wichita Royalty Company were accomplished through the facilities of the bank or the active participation of its officers and agents in respect to the transfer of said funds from

the account of the Wichita Royalty Company to the individual account of G. W. Peckham. In respect to the transfer of such funds, these defendants say that the bank is not charged with notice resulting from such transfer of any intended misapplication of funds by the Trustee; that, while some of the checks were made payable to the order of the bank, they were in effect bearer checks and were presented by Peckham to said bank with instructions to transfer the same to his individual account. They were not intended for the bank or for the Royalty Company. The transaction was usual and customary. A customer desiring to withdraw funds frequently makes the check payable to the bank. That this was merely a custom of those having charge of the affairs of the Wichita Royalty Company, including Scannell. Generally, checks were payable to the bank for other expenses, such as office expenses, salaries, incidental expenses of many kinds. The bank had no interest in said checks so presented and payable to itself and said fact was not a circumstance charging the bank with notice of any intended diversion or misuse of the funds by G. W. Peckham. These defendants deny that the funds were diverted for the purpose of paying the trustee's personal debt or to paying his personal debt to officers of the bank, to the bank itself, or to pay indebtedness due the bank by third parties, or to pay the Marlborough debts.

It says that during this period of time the Marl-
319 borough Addition had an account with the bank, a deposit and liability account. W. H. Peckham had a deposit and liability account; G. W. Peckham had a deposit and liability account; J. T. Harrell had a deposit and liability account. That the transfer of funds upon checks was made generally by a teller, either the receiving or paying tellers of the bank. These tellers were not required to institute an inquiry and check the various cross entries of various customers who might finally receive a part of the proceeds of such checks, in order to determine whether one,—a trustee—was unfaithful to his fiduciary. The bank was required to pay

funds upon the authorized check of the depositor and this is all it did.

XL.

In reply to paragraph XXXIX, these defendants say that they would not be in any way prejudiced or bound by what the books of the trust reflected; that no official of the bank, or agent or representative, knew anything about the books of the trust or had access to the same. The books of the trust were kept by E. E. Scannell, the present trustee. The bank had the right to assume that he would cause the books to reflect the truth.

Wherefore, the defendants say that while they do not admit the facts pleaded in paragraph XXXIX they say that, if such facts were true, no liability would be created by reason thereof, in that the bank was not charged with notice of the book entries on the Wichita Royalty Company's books.

XLI.

In reply to paragraph XL, these defendants say that they are without sufficient knowledge to admit or deny the manner and way in which Peckham purchased royalties. Therefore, they deny the statements contained in paragraph XL, except they say that Peckham
320 did extensively deal in oil and gas properties in his own right and as an individual, which he had a right to do; that E. E. Scannell, the present trustee, was thoroughly familiar with the manner and way in which Peckham conducted said business and at no time ever raised any complaint thereto to the plaintiff bank, or its officers, until after Peckham had died and then only after the bank had called upon Scannell to pay the balance of the obligation owing to it by the Wichita Royalty Company.

Further replying to paragraph XL, these defendants say that the allegations are too general upon which to predicate any basis of liability; that said paragraph contains only conclusions and no specific instances of transactions wherein the properties were bought in the name of the trustee and later sold by the trustee to the Royalty Company, after they had become condemned.

Wherefore, this paragraph should be stricken.

XLII.

In reply to paragraph XLI, these defendants say that the allegations therein are too general upon which to form any denial or admission; that said paragraph should therefore be stricken; that the cross-complainants should be required to identify the transactions mentioned.

Wherefore, not having knowledge or information of the matters alleged in said paragraph, these defendants deny the same.

XLIII.

In reply to paragraph XLII, these defendants say that G. W. Peckham was not required to secure the authority of the certificate holders in the conduct of the business. In fact, the certificate holders had no power or right to direct his conduct; that E. E. Scannell, who, at the time of all the transactions complained of, was the secretary and treasurer and a certificate holder, knew
321 all the facts relating to the handling and management of the affairs of the Wichita Royalty Company by G. W. Peckham, Trustee, but in this connection these defendants say that since Scannell has succeeded Peckham as trustee he has elected to hold all of these properties. It was his duty to make an election at the time he qualified as trustee, being possessed with knowl-

edge of all the facts at said time, and after qualifying as trustee he elected to hold and assert unqualified title to said properties; that if any facts existed rendering the acquirement of the properties from Peckham individually to Peckham as trustee of the Wichita Royalty Company were such as entitled Scannell to repudiate such title, the title would thereupon revert to the estate of G. W. Peckham and said estate would then be possessed of such assets, and, if a money liability was created against the bank in respect to the purchase of said properties, in equity the bank would be entitled to apply the value of said properties to its indebtedness; that no claim was made by Scannell against the estate of G. W. Peckham or the administrator by virtue of those transactions. He (Scannell) elected to hold said properties, to use the proceeds therefrom in respect to the administration of the same, the payment of his salary, the payment of attorney's fees, the prosecution of this litigation, and, after the properties were depleted, to assert an election to repudiate the transactions. Equity and good conscience will not permit a trustee to assume this attitude. The properties in question were fluctuating in value, oil properties, worth much maybe one day and little another. Therefore, he cannot assume an equivocal attitude, giving him the right to take advantage of a future condition at a resulting loss to one who was not responsible for the conduct of the trustee.

322 Wherefore, said cross-complainant is estopped in good conscience to claim a liability against these defendants by virtue of any transactions whereby Peckham, as trustee, may have purchased from himself as an individual.

XLIV.

In reply to paragraph XLIII, these defendants deny that the properties described in subdivisions (a) and (b), of said paragraph XLIII, were purchased by Peck-

ham, as trustee, from himself individually; that the tract of land described in Subdivision (a) was purchased from A. J. Mathis and wife, who conveyed the same direct to the Wichita Royalty Company. Peckham advanced the amount of the purchase price personally and caused a transfer of a like amount from the Royalty Company account to his individual account, and thus reimbursed himself for such sum.

In respect to the properties described in subdivision (b), of said paragraph, the purchase of said properties was a joint purchase by G. W. Peckham for and on behalf of the Wichita Royalty Company, by W. T. Knight, Harry Hines, W. L. Robertson, and J. T. Harrell. Title to the same was taken in the name of W. T. Knight for convenience. The records and books of the Royalty Company immediately reflected the ownership of said property at the time the purchase was made and, after the death of G. W. Peckham, E. E. Scannell filed suit to establish the interest of the Royalty Company therein and elected to hold the same, and it was not until after the property had declined in value that he sought to throw off the burden of said purchase on some one else.

In respect to subdivision (c), of the property known as the Marlborough Addition, these defendants say that E. E. Scannell has elected to hold said property after he became trustee and with full knowledge of all the facts, and these defendants replead their answer to
paragraph .... in reply to the attempted election
323 to rescind the purchase of the Marlborough Addition, and say that said E. E. Scannell, as trustee, is estopped to claim a rescission of the purchase of the Marlborough Addition because of the facts alleged in paragraph .... of this answer.

These defendants say that they are without sufficient knowledge or information upon which to predicate any answer to the circumstances surrounding the purchase

of the properties described as (d) and (e), and therefore deny the allegations in respect to said paragraph XLIII concerning said properties.

In respect to the properties described in subdivision (f) of said paragraph, these defendants say that said property was purchased by G. W. Peckham for the benefit and use of the Wichita Royalty Company. The title originally was taken in the name of G. W. Peckham, who advanced $160 for the purchase price of same. That the books and records of the Wichita Royalty Company immediately reflected said purchase and the properties were conveyed to the Wichita Royalty Company for the sum of $160, the amount advanced by G. W. Peckham for the purchase price.

These defendants say that it is true that some of the royalties purchased by G. W. Peckham never proved productive, but others did; that the substitute trustee, Scannell, cannot elect to repudiate the purchase of those royalties which proved non-productive and hold on to the ones which proved valuable, and these defendants deny that said trustee has any right to an election at this time to rescind the purchase of royalties which have either been depleted or which were never productive of oil.

XLV.

In reply to paragraph XLIV, these defendants admit that G. W. Peckham died about November, 1929; that E. E. Scannell was appointed substitute trustee;
324 that he had theretofore been the bookkeeper, in charge of all the books and records and looked after the office affairs of the Wichita Royalty Company, and was the secretary and treasurer of said company. As to whether he was the owner of stock in the trust during said period of time, these defendants are without sufficient information upon which to predicate an ad-

mission or denial, but in this connection say that said substitute trustee has refused to permit these defendants access to the stock books of the Wichita Royalty Company in order to ascertain these facts. They admit that W. H. Peckham became, by appointment of a Court having jurisdiction, the administrator of the estate of G. W. Peckham and admit that after the death of G. W. Peckham a controversy arose as to whether or not certain checks should have been credited upon the note of the Wichita Royalty Company due said bank. The books and records of the bank were inspected by Scannell. He was fully informed as to the deposit balance of the Wichita Royalty Company and the amount of indebtedness that it owed soon after he was appointed substitute trustee, and it was thereupon developed that after the death of G. W. Peckham that there could be no accurate accounting as to the application of certain checks aggregating approximately $1,900, and the receipt by the Royalty Company of the sales price of two royalties aggregating $11,400, and an effort was made to adjust said difference and controversy for a short period of time; that after the said Scannell inspected the books of the plaintiff bank and being convinced that there was no application made by the bank upon the notes payable account of the Wichita Royalty Company of said checks, and that the bank had not received the benefit of any of the funds received from the sale of the two royalties, he conformed his books as to the liability of the Wichita Royalty Company to correspond with those of the bank's.

325 He recognized the liability of the Wichita Royalty Company upon its note due said bank and made a payment thereon, and recognized the liability of the Wichita Royalty Company upon its indorsement of the note of the Texas Investment Company, successor in title to the Marlborough Addition, and made a payment thereon, and filed a claim against the estate of G. W. Peckham for the sum of $19,926.67, which claim was not allowed, but no action was ever taken by him on said claim. There was no effort to conceal any of the trans-

actions as far as the bank, or its officers, were concerned. It was merely a matter of business judgment, endeavoring to secure the widow of G. W. Peckham to pay the claimed liability of $19,826.67, and this sum was all that was claimed by E. E. Scannell to be due the Wichita Royalty Company and he knew all of the facts at said time. He had signed substantially all of the checks now made the basis of this claim against the bank. He had received as secretary and treasurer and bookkeeper the returned bank statements showing the debits of said checks; he had written up the vouchers; he had received the deed from Peckham to the Marlborough Addition; he had entered the purchase upon the books of the company; he had paid from the Royalty Company's accounts debts due for the purchase price of the Marlborough Addition; he had consulted and advised with an attorney other than the one who is bringing this lawsuit, respecting his rights, and he was therefore fully informed as to the facts and the law would therefore charge him with knowledge of the legal effect of such facts, and in this connection these defendants allege that it was only a short period of time, not over sixty days, that the effort to settle this discrepancy was made, not by the bank but between Scannell and the widow of George Peckham.

326 XLVI.

In reply to paragraph XLV, these defendants say that the said Scannell knew all of the facts relating to the alleged defalcations at the time he became substitute trustee. If he did not tell his attorney such facts, it was his duty to do so and he was charged with the legal effect of such facts. These defendants admit that the claim against the estate of G. W. Peckham was prepared, presented, and filed to the administrator, but was not allowed, but these defendants deny that the trustee actively joined in a continuation of any concealment of any fraud of the former trustee with the officials of the

bank. Scannell knew all the facts and the law charged him with knowledge of his legal rights as trustee of the Wichita Royalty Company, and in this connection the defendants allege that he claimed the Marlborough properties for at that time the properties were valuable, worth more than the debts and the purchase price.

These defendants deny that Scannell was without counsel or legal advice. They admit that after the death of G. W. Peckham Scannell voluntarily and for the first time informed J. T. Harrell and J. A. Kemp of the ownership of the Wichita Royalty Company in the Marlborough Addition, which had then become incorporated under the name of the Texas Investment Company; that it was at Scannell's request and demand that one-half of the capital stock was issued to the Wichita Royalty Company, and he voluntarily indorsed the Wichita Royalty Company's name on the note of the Texas Investment Company and renewed it from time to time; that at said times he knew all of the rights, or knew the facts relating thereto, and that there was no effort to conceal these facts from the stockholders of the Wichita Royalty Company.

XLVII.

In reply to paragraph XLVI, these defendants say that Scannell voluntarily renewed the notes of the Wichita Royalty Company due to the plaintiff
327 bank and voluntarily indorsed and renewed the notes of the Texas Investment Company to the plaintiff bank, and demanded and received one-half of the stock in the corporation which took over the assets of the Marlborough Addition; that he was elected to and assumed the duty as president of the Texas Investment Company; that there was no effort to tie him up in any way; that he acted voluntarily and it was only when he was called upon as trustee of the Wichita Royalty Company to pay its obligations that he made any complaint about any of the transactions.

XLVIII.

In reply to paragraph XLVII, these defendants admit that the bank sued the Wichita Royalty Company and asked for the appointment of a receiver. They deny that a District Judge was persuaded to improvidently appoint a receiver, but they say that such action is a proper action for the appointment of a receiver.

XLIX.

These defendants say that they are without sufficient information and knowledge upon which to predicate a definite answer to the allegations in paragraph XLVIII. They do not know what happened between the substitute trustee and such attorney, but that these defendants were not charged and no liability could be predicated against them by reason of any transactions between said attorney and client. They do say that Scannell at all times knew all of the facts; that he consulted and advised with attorneys immediately upon his appointment as trustee of the Wichita Royalty Company in November,
328 1929, and that no suit was ever filed until after two years from the date of the transactions herein complained of, and that Scannell having knowledge of all the transactions and being in law charged with knowledge of the same his knowledge would be imputable to all of the shareholders, and limitation and laches would bar and deny any recovery in favor of the said Scannell as trustee of the Wichita Royalty Company against the plaintiff and the interpleaded defendants herein, and these defendants plead the laches and delay and limitation on the part of the Wichita Royalty Company and its trustee in bar of any right to recover in this proceeding.

L.

In reply to paragraph XLIX, these defendants deny that any trust funds were wrongfully transferred from

the deposit account of the Wichita Royalty Company to the individual account of G. W. Peckham through the facilities and active participation on the part of the bank or its officers, or in fraud of the rights of the shareholders or of the Wichita Royalty Company. They again say that current statements were made and delivered from the beginning of Peckham's tenure of office as trustee up until his death, each month, of all checks drawn upon the Wichita Royalty Company account, together with statements from said bank showing the deposit balance at the end of each month and showing the debit of said checks to said deposit account; that said checks were drawn, executed, and signed by authorized agents and officers of the Wichita Royalty Company and the said Scannell knew at the time he became substitute trustee all of these facts and knew that the plaintiff bank repudiated any claimed deposit liability to the Wichita Royalty Company, and knew that said bank would refuse to pay any check on said account except for such sums as were actually shown from said statements
329 to be on deposit; that such acts upon the part of the bank amounted to a refusal to recognize or pay such deposit liability; that accounts were furnished by the bank showing that no such deposit liability was recognized.

Wherefore, any deposit liability as claimed is barred and the cross-complainant is guilty of laches and delay in respect to prosecuting any action therefor, which the plaintiff and these defendants plead in bar of a recovery on any alleged deposit liability. They deny, however, that any such deposit liability exists or that any concealment of any of the transactions was made as alleged, or that the bank was guilty of any participation or wrong with G. W. Peckham while he was trustee.

LI.

In reply to paragraph L, of said cross bill, these defendants say that they are without information or knowl-

edge to say where the stockholders of the Wichita Royalty Company live, except the substitute trustee. They do say that the stockholders knew of the place of business where this trust was conducted; that they could have informed themselves as to all the facts pleaded herein; that the books were open to them for inspection at all times and that nothing was concealed from the stockholders by the bank or its officers, agents, and employees. They say that the facts were not self-concealing; that the books, vouchers, and records of the Wichita Royalty Company fully disclose all of the facts pleaded herein and that the stockholders could have ascertained such facts had they desired and acted with reasonable diligence; that the bank did not owe a higher duty in respect to such matters than the stockholders themselves. They had placed G. W. Peckham in charge of the assets and he was their trustee, not the banks. The bank had no right and owed no duty to supervise his conduct.

330 Current statements were mailed by Scannell to the stockholders showing the progress of the affairs of the Wichita Royalty Company. He notified all stockholders of the death of G. W. Peckham and of his appointment as substitute trustee, and it was the duty of the stockholders to look after their affairs and they are guilty of negligence and delay in bringing a suit now against a bank for any defalcation of the trustee, and after the trustee is dead and unable to disclose the true facts relating to the various transactions.

These defendants deny that the bank ever actively or knowingly aided in making any transfer of funds from the Royalty Company account to the individual account of Peckham, or knew that Peckham was commingling trust funds with his own, and deny that they actively participated or assisted him in so doing. They deny that they knew that Peckham was using trust funds for personal accounts or that he was using trust funds to pay personal debts, or that his personal credit rating would be increased by reason of the various transfers made, or

that it aided in making any transfers or accepted any payment of trust funds in payment of the personal debt of Peckham in any wrongful transfer of trust funds or that it ever received any trust funds in payment of any obligation Peckham owed to the bank, or that it was charged with any such knowledge, but that it at all times believed that Peckham was honest and fairly transacting the business of the Wichita Royalty Company as trustee; that Peckham was a man of good reputation in this section; that he was regarded well by all who knew him for honesty and integrity; that he was appointed as trustee by a District Court of this county. He had various dealings with many business men in this section and his
331 reputation for business integrity, honesty, and fair dealing was good and the bank never suspicioned that Peckham was acting fraudulently or in violation of any trust or duty he owed the Wichita Royalty Company. In all of the transactions the bank and its officers acted in good faith and the said bank never received any benefits from any of the transfers of such funds. Peckham died owing the bank approximately $25,000, more than he owed during the continuation of the trust under his management.

Wherefore, these defendants say that they deny the allegations contained in said paragraph L.

LII.

Answering paragraph LI, these defendants deny that G. W. Peckham from the beginning of his trusteeship was derelict in the discharge of his duties or that he forfeited any right to compensation or repudiated the trust, was guilty of gross negligence or claims the property, or misappropriated trust funds in such manner as would render this bank liable for any act of defalcation on his part. As to whether or not he was guilty of such conduct, as alleged, as would warrant his removal or would entitle him to no compensation, would not render any

liability against the bank for the funds he drew as salary. The bank had the right to assume that he was entitled to his salary. It had no knowledge of any facts which would render it liable to repay to the shareholders of the Wichita Royalty Company the salary paid to G. W. Peckham during his tenure of office, and these defendants deny the allegations in paragraph LI of said bill of complaint wherein the cross-complainants seek to recover against these defendants for salaries paid to G. W. Peckham. In this connection, these defendants say that the shareholders knew, or by the use of ordinary
332 care would have known, that Peckham was handling said estate in the manner and way in which he did handle it, and that he was currently drawing salaries for his services, and the delay of more than six years in bringing any action to recover said salaries bars such recovery under the equitable doctrine of laches and stale demand, and said claim for salaries is barred by limitation, which these defendants plead in bar of all the facts alleged in said paragraph, as well as in bar of the other allegations made the basis for a recovery herein against these defendants.

LIII.

In reply to paragraph LII, these defendants deny that they ever knew that G. W. Peckham was dishonest or unfaithful to his trust and deny that Peckham ever paid his personal debts to the bank with trust funds, as alleged, or that he was transferring funds from the account of the Wichita Royalty Company for the purpose of using such funds for his own personal benefit, and deny that they knew that he was acting in any dual capacity, as alleged. They deny that the bank or its officers permitted Peckham to commingle trust funds with his personal account, or participated in any manner in such transfer or disbursement. They deny that they are liable to the said Wichita Royalty Company in the amount of $200,000 or for any other such sum. They further say

that the whole claim is barred by the statute of limitation of two and four years; that the cross-complainants have been guilty of laches in prosecuting any suit for recovery herein. They further say that a cross-action was first filed in this case in April, 1931, at which time a recovery was prayed for only the sum of $85,000 upon a deposit liability. In said cross-action it was alleged that demand had been made upon the bank for the deposit
333 liability of the Wichita Royalty Company and such demand was refused, and now, five years later, these cross-complainants make another demand for a deposit liability of an additional sum of $115,000 and say this is the first demand. All of the facts and circumstances hereinbefore pleaded show that the bank at the time it rendered its current statements to G. W. Peckham, as trustee, showing the deposit liability of the bank to the Wichita Royalty Company and at the time that E. E. Scannel' was appointed as substitute trustee in lieu of G. W. Peckham, deceased, and when he examined the books of the bank and at the time of the filing of the first cross-petition the bank repudiated any deposit liability to the Wichita Royalty Company and its trustee. The said Wichita Royalty Company at all times knew that the bank would not pay any alleged deposit liability other than as shown by the current statements which it furnished. That such facts were tantamount to a demand and refusal and therefore, this suit having been brought more than seven years after the death of G. W. Peckham, claims are barred and the cross-complainants are estopped to recover upon any such deposit liability on the equitable grounds of laches, which is here pleaded.

LIV.

In reply to paragraph LIII, these defendants do not admit or deny the insolvency of G. W. Peckham at the time of his death, but say that only such assets as this bank had received as a pledge for his indebtedness were received by it through the administration of his estate.

In this connection, they say that the cross-complainants retained the properties conveyed to it by Peckham as owners in fee simple and not as a lien holder; that had the substitute trustee elected to rescind such transactions as he now claims were fraudulent, it would have required a tender back of the properties to G. W. Peckham or his estate and vested title in the estate of G. W. Peckham, and, in the event of a liability on the part of this bank for the monies expended for the purchase price, it would have had an equitable lien as security for said properties in the hands of the administrator and the properties themselves should have first been applied to the claimed indebtedness herein. Therefore, it would have required a claim to have been presented against the estate of G. W. Peckham to his administrator and upon a disallowance of such claim suit, in order to establish the same, was required under the Texas statutes to be filed in ninety days from the disapproval of said claim, none of which was done. The liability in such respect, if any existed, would be a primary liability against G. W. Peckham and his estate and only in the event the properties or the assets belonging to the estate of G. W. Peckham were insufficient to pay the same could any liability be asserted against the bank, and the said Royalty Company, having failed to present a claim and having failed to follow the statutes relating to the administration of estates of decedents in filing a suit within ninety days after the rejection of said claim, is forever barred from prosecuting any claim against the estate of G. W. Peckham, deceased, and being barred against one primarily liable for such alleged indebtedness, they are estopped and barred from enforcing any liability against those who may be liable only secondarily.

334

Wherefore, these defendants say that the failure to promptly elect, the failure to present any claim, and the failure to file any suit on such claim has estopped and barred said cross-complainants from asserting any liability against these defendants.

335 LV.

In reply to paragraph LIV, these defendants say that they are without knowledge or information as to the purchase price of the tract of land mentioned in subdivision (1) of paragraph LIV, or as to whether or not the mineral estate was acquired at a time its value was fluctuating. They admit that G. W. Peckham conveyed a 3/16ths of a 1/8th royalty in said land to the Wichita Royalty Company under contract of March 12, 1923, for a consideration of $7,500; that the property was owned jointly by Peckham and B. L. Fain and that the payment was made, of $2,500 cash, directly to B. L. Fain, one of the joint owners; that the bank had no knowledge of the details of the transaction or the purchase of said property, but say that all of the details are well known to E. E. Scannell; that the books and records of the Wichita Royalty Company reflected fully the transaction and that the bank and the other defendants would in nowise be liable for the purchase price of said property.

These defendants say that they are without information and knowledge to sufficiently answer subdivision (5) of paragraph LIV, and, therefore, neither admit nor deny the facts therein stated.

But they say in reply to subdivisions (6) and (7), of paragraph LIV, that the sum of $2,516.67 represented a part of the purchase price of a royalty sold to the Wichita Royalty Company owned by G. W. Peckham and B. L. Fain, and that on May 8th G. W. Peckham paid to B. L. Fain the amount of $2,516.67, representing again Fain's interest in said purchase price; that the sum of $2,533.33 representing the transfer from the Wichita Royalty Company to the individual account of G. W. Peckham was a part of the purchase price of said royalty belonging to G. W. Peckham. The defendants deny that the account of G. W. Peckham on May 11th was only $2,836.43, but was in the sum of $4,480.67.

336 In answer to subdivision (8) of said paragraph LIV, these defendants deny that any part of the $3,050.60 was trust funds paid upon the personal indebtedness due by Peckham to the bank; that on said date the said G. W. Peckham had funds, in addition to any funds transferred from the account of the Wichita Royalty Company, in the sum of $3,088.59, or more than sufficient of his own personal funds, without regard to any funds realized from transfers aforesaid, with which to make said payment and that the bank had no knowledge and was not charged with knowledge that Peckham by virtue of said transaction was unfaithful to his trust or that he was using the money of the Wichita Royalty Company to pay his private debt, and that said payment did not charge the bank with any knowledge of a wrongful use of the funds of the Wichita Royalty Company by Peckham, or charge them with any knowledge to look to the application of such transfers.

In reply to subdivision (9) of the said paragraph LIV, these defendants deny the facts therein alleged, in so far as the same create any liability against these defendants or charges them with any actual or constructive notice of Peckham's fraudulent conduct in dealing with trust property or trust funds, and deny that the bank had no right to permit the transfer of additional or further funds or to cut off Peckham's salary as trustee, or to interfere with the management of the trust by Peckham.

In reply to subdivision (10) of said paragraph, these defendants say that they are without knowledge as to the amount of oil that said royalties produced, but say that the Wichita Royalty Company and its trustee, including Scannell, have continued to hold said property for a period of more than thirty years and are estopped now to assert any liability against these defendants by reason of said purchase.

337 In reply to subdivision (11) of said paragraph, these defendants deny that Scannell was without

knowledge of these transactions and say that Scannell knew all the facts and was therefore charged with the legal effect of such knowledge.

In reply to subdivision (12) of said paragraph, these defendants deny that the trustee is now possessed with the power to elect or to make a tender. Having with full knowledge received said properties and depleted the same, he cannot now claim the right to rescind and collect the money back and to fix a liability against the plaintiff bank and these defendants, or to assert any equitable lien thereon. If such rights ever existed, they are barred by the equitable doctrine of laches and by the statutes of limitation, which these defendants plead in bar of the right of the cross-complainants to recover anything thereby.

In reply to subdivision (13) of said paragraph LIV, these these defendants deny that the cross-complainants have any right to credit the purchase price against the royalties produced, to charge the plaintiff bank and the defendants herein with interest, and deny the legal conclusions pleaded in said subdivision (13).

LVI.

In reply to paragraph LV, these defendants say that the sum of $1,200 represented the purchase of a Studebaker automobile, 1924 Model, which cost on the market new $1,800. Said automobile was used by Peckham in the transaction of business of the Royalty Company. The Royalty Company received and used the said car, obtained the benefits therefrom, and sold the same some two and one-half years later for $555 and received credit therefor, all of which facts were known to Scannell, as he was the bookkeeper and secretary and treasurer and handled the transactions, and he is therefore
338 estopped now, twelve years later, to assert a liability against the bank by reason of said

transaction, and that the bank was entirely ignorant of any wrongdoing, if any existed, in Peckham selling his automobile to said company at a loss of $600.

LVII.

In reply to paragraph LVI, and to each and all of the subdivisions thereof, these defendants say that G. W. Peckham, together with other associates, including Dr. J. H. Massie, on and prior to April 22, 1924, purchased a substantial royalty interest out of the L. F. Wilson Pasture; that the entire purchase price of the same, upon information and belief, represented the expenditure of approximately $150,000; that said royalty was purchased for resale and that G. W. Peckham only had a small interest therein; that the title was taken in the name of G. W. Peckham only for convenience; that a part of the cash that was put up for the purchase price of said property was $75,000, which was put up by Dr. J. H. Massie, who is now dead, and other parties unknown to the defendants herein contributed other sums, including G. W. Peckham; that said royalties so acquired were resold in units; that some were sold to the United Royalties Company, the King Royalty Company, and various others whose names are unknown to the defendants herein, but in this connection these defendants charge and allege that the 1/64th interest sold to the Wichita Royalty Company was sold at less than its fair market price at said time and substantially less than the other like interests were sold to the other purchasers; that said royalty was a valuable oil producing property; that Scannell was familiar with the transaction; that the Wichita Royalty Company has kept said property during all of said time, for a period of over twelve years, depleted the same, and used and converted the proceeds therefrom; that said royalty produced up to the time of the sale
339 more than the purchase price, so these defendants allege upon information and belief.

These defendants further deny that G. W. Peckham paid the bank any sum on March 18th upon his personal liability. These defendants say in this connection that W. H. Peckham paid a sum of $10,026.75 upon a liability which he owed to said bank; that there was no payment to said bank on G. W. Peckham's personal liability of $5,500 and no payment to said bank by reason of said transactions out of any trust funds, or any funds transferred to the individual account from the account of the Wichita Royalty Company; that G. W. Peckham had more than sufficient funds to pay the total $10,026.75 on said dates, without resorting to the use of any funds transferred to his account from the Wichita Royalty Company.

In reply to subdivision (4) of said paragraph, these defendants say that they are without knowledge or information as to the amount of oil this property has produced, but say that the said Wichita Royalty Company has owned and claimed the same up until the time of its sale, shortly before the death of the trustee, G. W. Peckham, and cannot now claim a rescission of said transaction.

LVIII.

In reply to paragraph LVII, these defendants say that they are without sufficient knowledge and information upon which to base a denial or admission of the facts set forth in said paragraph LVII, but say that they had no knowledge of any improper conduct on the part of G. W. Peckham in the purchase of said White lease or the transfer of funds therefor; that they presumed and had the right to presume that G. W. Peckham was rightfully transferring funds from the account of the Wichita Royalty Company to his individual account, and received no benefit therefrom, and that the bank should not
340 be charged with any sum whatsoever by virtue of said transaction and that no accounting should be had to determine any sums owing by the bank to said cross-complainants.

LIX.

In reply to paragraph LVIII, these defendants deny that any sum represented by the payment of $5,100 on November 3, 1934, was paid from trust funds; that at the date of said payment G. W. Peckham had on deposit in said bank unquestioned funds belonging to himself individually, not including any transfers from the account of the Wichita Royalty Company, in excess of the sum of $5,100. To be exact, his deposit balance, without taking into consideration any sums theretofore transferred to it from the Wichita Royalty Company, on said date was $5,512.77. Therefore, no liability could exist by reason of said transaction against the plaintiff bank and these defendants.

LX.

In reply to paragraph LIX, these defendants say that said transaction was a purchase by G. W. Peckham for the Wichita Royalty Company from Ray & Massie of the property in question for a consideration of $2,500, which sum Peckham advanced personally and was reimbursed; that the title to said royalty ran from Ray & Massie to the Wichita Royalty Company; that the plaintiff bank and these defendants received no benefit from said transaction and had no knowledge of the same, and that there is no liability for an accounting against them in respect thereto.

LXI.

In reply to paragraph LX, these defendants say that no portion of the sum of $2,500, represented by the transfer of said sum from the Royalty account to G. W. Peckham's individual account, was in Peckham's personal account on May 12, 1925; that while said $2,500
341 was not funds, nevertheless no part of the payment of $4,056 made by Peckham to the bank

on May 12th included any portion of said sum of $2,500 and that no sum whatever, representing monies from the transfer of funds from the Royalty Company's account to Peckham's account, was included in the payment to said bank on said date and they deny that $1,386.92, or any other sum included in said payment, was the trust's money.

LXII.

In reply to paragraph LXI, these defendants deny that any part of said $66.67 represented trust funds or monies transferred from the account of the Wichita Royalty Company to the individual account of G. W. Peckham; that the said G. W. Peckham on said date had a balance of $602.54, irrespective of any sums received on transfers from the account of the Wichita Royalty Company.

LXIII.

In reply to paragraph LXII, these defendants say that the property in question was acquired by G. W. Peckham for the Wichita Royalty Company at a cost of $11,000; that he only reimbursed himself for the money actually expended and the bank had no notice or knowledge, and there was none, of any fraudulent or wrongful conduct in the transaction; that said properties have been retained by the Wichita Royalty Company since July, 1925, it has received the oil produced therefrom and depleted the same, it has taken no action until this time, that is, a period of some twelve years has elapsed since the acquiring of said property, and that Scannell knew all about the transaction and said cross-complainants are estopped to complain thereof.

LXIV.

In reply to paragraph LXIII, these defendants say that on September 24, 25, G. W. Peckham had on
342 deposit in his personal account of funds unquestioned, irrespective of any funds transferred

from the account of the Wichita Royalty Company, the sum of $5,245.63 and that no part of said sum of $3,869.25 represented funds transferred from the account of the Wichita Royalty Company or trust funds.

LXV.

In answer to paragraph LXIV, these defendants say that the Highland Irrigation Company was a corporation duly incorporated and the payment by G. W. Peckham of an indebtedness to said company upon check drawn upon his personal account would create no liability against the plaintiff bank, or its officers, or against J. T. Harrell, and deny that any sums paid to the Highland Irrigation Company was trust funds at the times therein alleged.

LXVI.

Answering paragraph LXV, these defendants deny the facts set out therein and say that on the date of May 15, 1926, G. W. Peckham had on deposit in his individual account the sum of $916.57, irrespective of any funds transferred to said account from the account of the Wichita Royalty Company, and that no part of said $550 paid to said bank on said date was trust funds.

LXVII.

In answer to paragraph LXVI, these defendants deny that on August 10, 1926, any part of said $550 constituted trust funds or funds from the deposit account of the Wichita Royalty Company.

LXVIII.

In reply to paragraph LXVII, these defendants say that on January 19, 1927, Peckham paid on his personal in-

debtedness to the bank $2,506.12; that said payment was made by a check drawn by G. W. Peckham in-
343 dividually upon his personal account and applied against G. W. Peckham's individual indebtedness; that applying the minimum balance rule of said funds the sum of $914.71 represents funds transferred to said personal account from the account of the Wichita Royalty Company, but in this connection these defendants deny that same was trust funds or that the bank had any notice or knowledge of the character of such facts, if they were in fact wrongfully transferred.

LXIX.

In reply to paragraph LXVIII, these defendants say that on March 16, 1927, Peckham had on deposit personal funds, without considering any sums transferred to his personal account from the deposit account of the Wichita Royalty Company, the sum of $1,601.52, and therefore no part of said check of $1,500 represented funds received on transfer from the account of the Wichita Royalty Company, and these defendants therefore deny that he made any payment on said date to said bank from trust funds.

LXX.

In reply to paragraph LXIX, these defendants say that the purchase in question was made by transfer from B. L. Fain of an oil assignment; that the Royalty Company paid B. L. Fain the purchase price thereof and that these defendants were without any knowledge or notice of any interest which Peckham may have had in said property, and deny that the plaintiff bank and the co-defendants herein are liable in any amount by reason of said transaction or that the said Wichita Royalty Company is entitled to an accounting for said $3,000 and interest.

LXXI.

In reply to paragraph LXX, these defendants say that on October 15, 1927, Peckham caused a transfer of $2,-

400 to be made from the account of the Wichita Royalty Company to his individual account upon a check
344 duly signed by E. E. Scannell drawn on the account of the Wichita Royalty Company; that the voucher originally accompanying the check had been detached before the check was presented to the bank and the bank had no notice or knowledge of the contents of the voucher, or the purpose for which the said check was given, and followed the instructions of the trustee as to the deposit and that G. W. Peckham was the only one in charge who had authority to direct the transfer of such funds, and the bank had no knowledge of any improper use of such funds or any intended misapplication thereof and denies that it received any trust funds on said date in payment of Peckham's personal liability.

LXXII.

In reply to paragraph LXXI, these defendants deny the facts stated in the above paragraph. They say that on said date Peckham had on deposit, of funds unquestioned, irrespective of any transfers from the account of the Wichita Royalty Company, the sum of $5,013.15. Therefore, no part of said sum of $3,163.78 was funds received by transfer from the account of the Wichita Royalty Company or trust funds.

LXXIII.

In reply to paragraph LXXII, these defendants say that the note and interest in question, for which the check of $4,200 was issued and paid, was an obligation owing by G. W. Peckham to Dr. J. M. Sweeton, a Methodist minister of this city; that it was a valid debt and was paid by G. W. Peckham, and the transaction would create no suspicion on the part of the bank and its officials that G. W. Peckham was acting wrongfully or fraudulently in making payment of said sum of $4,200 to this respected

minister of the gospel, and that no part of said
345 sum was trust funds. Peckham had on deposit at said time in his individual account $4,232.60, irrespective of any sums augmenting his account from transfers from the deposit account of the Wichita Royalty Company.

LXXIV.

In reply to paragraph LXXIII of said cross-complaint, these defendants deny that any part of said sum of $2,013.33 paid by Peckham on January 12, 1929, was funds augmenting Peckham's personal account received from the deposit account of the Wichita Royalty Company, and deny that $234.2[illegible] was trust funds and on the contrary say that Peckham on said date had on deposit $2,216.79, without considering any sums augmenting his account transferred from the account of the Wichita Royalty Company.

LXXV.

In reply to paragraph LXXIV, these defendants say that the records show that F. O. Harrell made the transfer of this interest direct to the Wichita Royalty Company; that the plaintiff bank and the other defendants had no knowledge of any personal interest that G. W. Peckham had in the transaction and therefore would in no event be liable if there was any improper dealing between Peckham and the trust in respect to said transfer. These defendants do not admit that Peckham had any interest in said transaction, but say that they are without sufficient knowledge upon which to predicate either an admission or denial and therefore deny that there was anything improper in said transaction, or that Peckham had any personal interest therein.

Furthermore, these defendants say that the transaction occurred more than twelve years ago; that the Roy-

alty Company has owned and held said properties all the time and has depleted the same, and cannot
346 now in good conscience and equity repudiate the transaction and retender the property, so as to create a liability against the plaintiff bank and these defendants.

LXXVI.

In answer to paragraph LXXV, these defendants deny the allegations contained herein that the records of the plaintiff bank were not available for inspection by the cross-complainants, and say that at the time G. W. Peckham died that E. E. Scannell was tendered full access to all of the records of the plaintiff bank and that he inspected many of them; that photostatic copies of the individual ledger sheets of the Royalty Company, G. W. Peckham, and of the liability ledgers of the said Royalty Company and G. W. Peckham were furnished to the cross-complainants more than five years ago, and that the plaintiff bank, J. T. Harrell, and the other defendants herein have at all times furnished to the said E. E. Scannell and his attorney complete information and the right to inspect all of the books and records of the bank relating to said accounts and transactions, and these defendants deny that any defalcations of G. W. Peckham were accomplished through the facilities of the bank and its officers. They do say, however, that during this period of time, from 1923 up to the time of the death of G. W. Peckham, there were numerous entries and cross-entries, charges and counter-charges, debits and credits in the various accounts of the parties; that there were the issuance of drafts, cashier's checks, and traveler's checks; that there were the payment of notes and the entry of credits, numerous and many, sometimes several on one day, and this is especially true with reference to the account of G. W. Peckham; that it was an active account from the year 1923 up to the time of his death and that during this period he deposited in his individual
347 account the sum of $1,683,534.13, consisting of 1,010 separate items; that only 46 of the 1,010

items came from the account of the Wichita Royalty Company; that 964 items making up this deposit came from sources unquestioned and unchallenged; that of the total deposits made during this period of time to Peckham's account only 11% thereof represented transfers from the account of the Wichita Royalty Company, and, to require the bank to check and recheck cross-entries, deposits, debits and credits would render it impossible for a bank to do business with a fiduciary; that said bank during all of said period of time was a commercial bank, well regarded in the city and section, was managed by a board of directors, it had numerous active officers, many tellers, bookkeepers, clerks; that those agents and representatives of the bank which handled the deposits did not as a rule handle the loan transactions or the receipt of payments on loans. It was not usual or customary when a customer made a payment upon his loan for the agent or officer of the bank receiving such payment to look up his deposit balance, or to inquire from whence the funds came that was accepted in payment on said loans; that all the payments that this bank received from G. W. Peckham upon his personal indebtedness during said period of time was upon checks signed by G. W. Peckham upon his personal account; that it never received any funds of the Wichita Royalty Company earmarked as such and it had no right to believe or assume that Peckham was acting wrongfully in the making of payments to it upon indebtedness owing to it upon checks drawn upon his personal account.

In this connection, the plaintiff bank and the defendants herein say that the accounts are not confused between the respective parties and that the individual
348 liability and records of the bank fully disclose the liability of G. W. Peckham as an individual, the liability of the Wichita Royalty Company as a trust; that all of this information is and has been in the possession of the cross-complainants for a long period of time; that the bank has from time to time tendered and the

cross-complainants have inspected and received the various books and records called for, and, while the cross-complainant has furnished to the plaintiff bank and its officers certain of its books and records, it has refused to deliver to them all of the same. It has refused to deliver to the plaintiff bank a list of the shareholders and a list of all of the checks issued during the period of time G. W. Peckham was trustee, or the books showing the cash receipts in detail, or the various audits of the Wichita Royalty Company, all of which have been withheld by said cross-complainant.

The plaintiff and these defendants further deny that they are indebted to the Wichita Royalty Company and E. E. Scammell, its trustee, in any sum whatsoever, either upon a deposit liability or upon any other kind of an action sounding in tort, or otherwise, and that there was no participation in any fraudulent or dishonest conduct between the bank and its officials and G. W. Peckham during the tenure of Peckham's office as trustee. They deny in toto, except as herein admitted, all of the facts set forth in paragraph LXXV.

LXXVII.

In reply to paragraph LXXVI, these defendants deny that they received any funds in payment of Peckham's private debt which were trust funds. They deny that but for such transfers and such alleged trust peculations Peckham would have been wholly unable to pay
349 the bank the monies which he personally borrowed from it, or that the bank received any profit therefrom, but on the contrary the plaintiff bank never made any profit but sustained a loss from the various transactions herein complained of; that during the period of time involved Peckham's personal indebtedness to the bank increased, the indebtedness of the Marlborough Addition increased, and there was no substantial reduction of the indebtedness due by the Wichita

Royalty Company. The Marlborough Addition was the debtor of the bank, Peckham was the debtor of the bank, and the Royalty Company was the debtor of the bank. Peckham at the time of his death owed the bank in excess of $25,000, the Wichita Royalty Company owed the bank in the sum of $27,000 and, in addition thereto, one-half of the contingent liability as an indorser on the indebtedness of the Marlborough Addition. So it is apparent that the bank did not seek to or profit from the transfers of funds from the account of the Wichita Royalty Company to the individual account of G. W. Peckham.

LXXVIII.

All of the transactions herein complained of arose more than two years prior to the filing of the original cross-action and arose more than seven years prior to the filing of this amended cross-complaint. The transactions complained of were continuous over a period from 1923 until 1929, isolated in their nature. G. W. Peckham was the sole trustee of the Wichita Royalty Company. He was the one and only one in authority. He was a man of good reputation and of large business dealings, reputed to be wealthy. Scannell, the substitute trustee, was the bookkeeper and secretary and treasurer during the period of time that G. W. Peckham was trustee. He was
350 the bookkeeper and secretary and treasurer of the Wichita Royalty Company prior to the time Peckham became trustee. He was an experienced bookkeeper. The Royalty Company has held the properties, or substantially all of them, continuously since the date of acquirement. G. W. Peckham is dead. He died suddenly. Those passing upon the charges herein made against him are without the benefit of the information which he could give and this plaintiff bank and the interpleaded defendants say that it would be inequitable to thus fix a liability upon said bank and its officers and directors for transactions occurring over a period of years from 1923

to 1929, and that the retention of the properties by the Wichita Royalty Company, the access to the books and records by the stockholders thereof during said period of time, the knowledge on the part of G. W. Peckham and E. E. Scannell of the various transactions, and of the delay in making any election or bringing any action creates an estoppel against the Royalty Company to assert a liability against the plaintiff bank and these defendants.

LXXIX.

Defendants show that the Wichita Royalty Company and its trustee, E. E. Scannell, seek herein now to repudiate title to certain royalties and other oil properties which it is claimed were wrongfully assigned by G. W. Peckham as an individual to G. W. Peckham as trustee of the Wichita Royalty Company, and at the same time seek to fix liability against the old bank and the other defendants on the theory that said old bank is liable for the alleged wrongs of the said G. W. Peckham; that if the old bank or any of the other defendants are responsible legally for the wrongs of G. W. Peckham, then in equity and in good conscience said defendants are entitled to a lien upon said properties, the title to which may be
351 repudiated both as against the Wichita Royalty Company and E. E. Scannell, and against the heirs at law of G. W. Peckham, as well as the administrator of his estate; that among the other properties, title to which has been so attempted to be repudiated and an attempted election has heretofore been made to repudiate the same, are the royalties in Wheeler and Gray Counties, Texas, which royalties are as follows:

Wheeler County.

(a) 1/128 plus 15/32 mineral interest as royalty in the NE ¼ of Section 47, Block 24, H&GN Ry. Co. Survey, Wheeler County, Texas.

(b) 1/256 plus 1/64 mineral interest as royalty in the W ½ of the SE ¼ of Section 43, Block 24, H&GN Ry. Co. Survey, Wheeler County, Texas.

(c) 1/256 plus 15/64 mineral interest as royalty in the E 1/2 of Section 54, Block 24, H&GN Ry. Co. Survey, Wheeler County, Texas.

(d) 1/16 mineral interest as royalty in the NW 1/4 of Section 44, Block 24, H&GN Ry. Co. Survey, Wheeler County, Texas.

(e) 1/16 mineral interest as royalty in the N 1/2 of Section 45, Block 24, H&GN Ry. Co. Survey, Wheeler County, Texas.

(f) 1/16 mineral interest as royalty in the E 1/2 of Section 57, Block 24, H &GN Ry. Co. Survey, Wheeler County, Texas.

Gray County.

(a) 1/4 mineral interest as royalty in W 1/2 of the SE 1/4 and the NE 1/4 of the SE 1/4 of Section 59, Block 25, H & GN Ry. Co. Survey, Gray County, Texas.

(b) 1/8 mineral interest as royalty in S 1/2 of Section 61, Block 25, H&GN Ry. Co. Survey, Gray County, Texas.

(c) 1/64 mineral interest as royalty in NW 1/4 of Section 60, Block 25, H&GN Ry. Co. Survey, Gray County, Texas.

These defendants show that they are entitled to, under the circumstances herein set out, and seek to have now enforced all such equitable rights and liens upon such properties, including the properties in Gray and Wheeler Counties, Texas.

352

LXXX.

Defendants show that upon the death of G. W. Peckham on the .... day of November, 1929, and shortly thereafter, when E. E. Scannell was appointed as substitute trustee, the said Scannell, as such substitute trustee, became possessed of all the facts of which he is now possessed and which he pleads as a basis for recovery herein, for the reason that he knew all the details regarding the Marlborough transaction and he knew of the purchases now alleged to have been made by Peckham, Trustee, from Peckham as an individual, he knew the full details of the manner in which the banking account of the Royalty Company had been handled through the old bank, the manner in which the checks had been drawn, and the fact that a part of the business of the Royalty Company had been conducted through the personal account of Peckham. In this connection the defendants show that upon the request of the said Scannell the old bank opened all its books and records to the said Scannell and he was given full and complete authority to make any inquiry into the transactions had by Peckham as trustee or as an individual, so far as same were reflected by the books of the old bank, and no effort of any kind was made by any of the defendants to withhold from him any information which he might desire. That shortly after the death of the said Peckham and, to wit, on the 16th day of December, 1930, the said Scannell caused a claim to be filed against the estate of the said Peckham, which in substance charged the said Peckham with embezzlement, in that it charged that he had used funds belonging to the Royalty Company for his own personal use to the extent of more than $19,000. At least from such time thenceforth there was no effort or reason, if there
353 was ever any effort or reason, for withholding from the public generally knowledge of the alleged wrongs upon the part of Peckham. That it now appears that the manner in which the Royalty Company's business was conducted was such that the substitute tru-

tee, whoever he might be, was the only person who had right or authority to act, but that upon the death of Peckham each and every shareholder was notified, or sought to be notified, of the fact of his death and the fact that his death had been sudden, which notice placed each and every shareholder upon notice or knowledge of the fact that an accounting would be necessary to be had between the substitute trustee and the estate of the deceased trustee; that the whole of this matter was left actually to Scannell; that if it should appear that Scannell did not have any of the facts which he now claims to have, he was in position to have gained the facts; he had sole possession of all the books and records of the Royalty Company; he had access to the books and records of the old bank; all the checks drawn by Peckham were monthly returned to the Royalty Company and were in Scannell's possession; he was placed upon notice and had actual knowledge of the fact that according to him Peckham had been guilty of actual defalcation; he had actual knowledge that in certain circumstances, at any rate, Peckham had caused royalties to be transferred from himself as an individual to himself as trustee; he had actual knowledge of the transaction known as the Marlborough transaction. All of such placed upon him the duty of action not only as to Peckham but as to the old bank, either of affirmance or disaffirmance of said transactions, this particularly because of the fluctuating nature of the value of the oil properties and royalties and of such property as
354 the Marlborough Addition. And he, the said Scannell, elected to hold all of said properties, not only the Marlborough properties, but as well all the oil and gas properties of which complaint is made. Had said properties continued to enhance in value, this election on the part of Scannell would have forever prevented either the old bank or the estate of Peckham from claiming said properties and would have placed the Royalty Company and Scannell and the stockholders in a position where they could not have gotten the benefit of these properties. Scannell was charged in law and by the

necessities of the case with the duty of making the election which every principal owes to his agent and every beneficiary to his trustee, namely, an election within a reasonable time after the termination of a relationship, to affirm or disaffirm alleged wrongful transactions, and such affirmation upon the part of the said Scannell is here pleaded to forever preclude plaintiffs from complaining of any item other than actual misappropriations by the said Peckham. In this connection it is pleaded by Scannell that for a time he was under the influence of his former connection with the said Peckham, who was his friend, and he sought to secrete the facts, but he admits that on the 30th day of December, 1930, he filed a claim, the substance of which was to charge his former friend with embezzlement, and from such time henceforth he was out from under said influence. And in this connection further it is alleged that Scannell for a time sought to secrete the facts in an effort to get the money from the insurance of Peckham, but this had ceased at the time of the filing of said claim. Furthermore, it is alleged that Scannell did not know his legal rights, but he knew the facts which charged him to know his legal rights. At or shortly prior to the institution of his original cross ac-
355 tion herein on the .... day of April, 1931, the said Scannell, having consulted his present attorneys, was in full possession of knowledge of his legal rights and knew or was charged to know all the facts which now form the basis of his cross action. He was then and there charged with the duty of affirming or disaffirming all transactions which he, as substitute trustee, ever expected to affirm or disaffirm. At that time he knew that the old bank not only denied liability to him as trustee or to the Royalty Company for any sums, but that the estate of G. W. Peckham also denied such liability, and if he had any rights it was his duty then and there to assert them. At said time he did not complain of any of the transactions set out in paragraphs numbered 9-14-34 and 50 to 75 Inc. of his amended cross action, but in all things affirmed said transactions, and he in nowise

indicated that he continued to hold said properties as any form of security for any claimed indebtedness upon the part of Peckham's estate to the Royalty Company and never alleged or claimed that there was any liability on account thereof. Such acts of affirmation and such acts in failing to disaffirm forever preclude any complaint now being made of said transactions set out in the cross-action herein filed and particularly paragraphs 9-14-34 and 50 to 75 Inc., thereof. His failure so to disaffirm said transactions, coupled with the great lapse of time and the nature of the properties operates by way of laches to forever bar any right so to disaffirm same, and said rights are likewise barred by the statutes of limitations of the State of Texas, which are here pleaded.

356 LXXXI.

Further answering herein by way of affirmative defense, these defendants, including the plaintiff bank, say that all of the facts alleged by the cross-complainant Wichita Royalty Company (with the exception of two or three items occurring after Peckham's death and which were transactions of Scannell) occurred during the lifetime of G. W. Peckham; that the Wichita Royalty Company was operated by G. W. Peckham as sole trustee and by C. E. Scannell, who was the bookkeeper and secretary and treasurer and who kept the records and office; that the said Scannell and Peckham from time to time furnished the stockholders of the Wichita Royalty Company with statements of the affairs of said company, and that all of said transactions occurring during the lifetime of G. W. Peckham were known to both Peckham and Scannell prior to the death of Peckham and could have been known by the exercise of ordinary diligence by the shareholders of the Wichita Royalty Company, as the books were open to public inspection on the part of the shareholders at any and all times, and that said shareholders, as well as the officers, including Scannell, could have discovered each and all of said transactions as are now

asserted prior to the death of the said G. W. Peckham; that the defendants are guilty of no concealment and no misrepresentations preventing the said Wichita Royalty Company and its officers and shareholders from discovering these facts prior to the death of G. W. Peckham and since the death of G. W. Peckham. These defendants say that the transactions complained of cover a period beginning in the year 1923. That many of the transactions complained of, in order to correctly ascertain the truth, would require the explanation of G. W. Peckham and that G. W. Peckham died in November, 1929, and nearly two years elapsed from the death of G. W. Peckham unt l the first cross-complaint was filed against these defendants, and more than six years elapsed be-
357 fore the filing of the present cross-complaint, after the death of G. W. Peckham, setting up additional liability in the amount of $115,000; that other parties connected with the transaction have died, namely, J. A. Kemp, who was a joint owner of the Marlborough Addition, J. H. Massie, who was interested in a transaction known as the Wilson Royalty, upon which a claimed liability was not originally asserted but which is now asserted since the death of J. H. Massie, and that these interpleaded defend nts are without the testimony of G. W. Peckham and without the testimony of the other parties involved in the transactions, who are now dead, and that the said cross-complainants are therefore guilty of laches and are barred by the equitable doctrine of stale demand in failing to bring this lawsuit or assert the proposed cause of action during the lifetime of G. W. Peckham, which these defendants allege that said cross-complainant and its constituent members had knowledge of all the facts or had sufficient knowledge to have placed a reasonably prudent person upon notice, and, had suit been brought during the lifetime of G. W. Peckham, these defendants would have had the benefit of such explanations and reasons concerning the various items and transactions complained of of the said G. W. Peckham, and by reason of the failure of the said cross-complainants to assert their cause of action during the lifetime of G. W

Peckham, they are now estopped to assert the same against these defendants, including the plaintiff bank, by reason of laches and stale demand and limitation, all of which these defendants, including the plaintiff bank, now plead in bar of the cross-complainants' right to recover herein.

358 In this connection, these defendants further show that, as herein set out, at the end of each month the old bank returned to the Royalty Company the canceled checks of the Royalty Company, together with a statement of its deposits; that this continued from the time of Peckham's appointment as substitute trustee up until after his death; that no complaint was ever made by any one of the bank of the manner in which Peckham was handling the business of the Royalty Company; that the bank did not know in fact, and was not charged to know in law, the details and manner in which the Royalty Company conducted its intercorporate business and had a right to assume that some form of check or audit into the method in which the business was being conducted would be made; that it now appears that the so-called shareholders of the Royalty Company contracted that they would not make any check or inquiry into the conduct of the trustee, and it now appears that they failed and refused to make any inquiry into the method in which he was doing business; that if there was in fact any wrong in the method in which the said Peckham conducted the business of the Royalty Company the shareholders, and each and all of them could have easily ascertained such, and should have ascertained such and should have notified the bank of such, but, having failed to do so and having lulled the bank into a sense of security with the belief upon the part of the bank that the business was being conducted properly, said shareholders and the Royalty Company itself are now estopped to complain of the manner in which said business was continued to be conducted; that had any complaint been made the bank would and could have corrected the same, but, in the absence of complaint, the bank was justified in believing that the same

was being properly conducted; that in keeping
359 with the equitable maxim that he who trusts most must suffer most, the shareholders, in view of the trust they placed in Peckham, are now estopped to complain as against the bank, who relied upon this trust and upon the appearance of regularity.

Peckham was the only representative (except Scannell) of the shareholders; that all knowledge which Peckham had would therefore be necessarily imputed to the shareholders and they would be barred by Peckham's knowledge, even though it should be held that Peckham was acting wrongfully.

Wherefore, the plaintiff bank and these defendants having fully answered the cross-complaint of the Wichita Royalty Company and E. E. Scannell against the City National Bank of Wichita Falls, J. T. Harrell, Trustee; E. A. Deaton, Liquidating Agent; and W. H. Peckham, Administrator of the Estate of G. W. Peckham, Deceased; Hazel Peckham, William Peckham, George Peckham, and Robert Peckham, surviving wife and children of G. W. Peckham, Deceased and the Texas Investment Company, a corporation, respectfully pray that said cross-complaint be dismissed and that said cross-complainants take nothing against the plaintiff and these defendants, and that the affairs of the City National Bank of Wichita Falls be wound up in an orderly manner in this proceeding, and in equity will ever pray.

WEEKS & MORROW,
BULLINGTON, HUMPHREY & KING,
Attorneys for City National Bank of Wichita Falls, E. A. Deaton, Liquidating Agent, Texas Investment Company, a corporation, and J. T. Harrell, Trustee.

T. R. BOONE,
Attorney for J. T. Harrell.

360 The State of Texas,
County of Wichita.

Leslie Humphrey, one of the attorneys for the interpleaded defendants and City National Bank of Wichita Falls, together with J. T. Harrell, defendant, being duly sworn upon their oath, depose and say that they have read over the foregoing answer and that the statements of facts therein made are true; that the statements upon information and belief as to facts as therein stated are verily believed by the affiants to be true.

J. T. HARRELL,
LESLIE HUMPHREY.

Sworn To And Subscribed Before Me, by Leslie Humphrey and J. T. Harrell, this 21st day of December, A. D. 1936.

MRS. GERTRUDE TURNER,
(Seal) Notary Public, Wichita County, Texas.

361 EXHIBIT "A".

Affidavit to Claim.

The State of Texas,
County of Wichita.

I do solemnly swear that the attached claim in favor of Wichita Royalty Company, a trust estate, against G. W. Peckham, deceased, is just and that all legal offsets, payments and credits known to me have been allowed.

The affiant further says that he is the sole trustee of the above company and that he makes this oath on facts which have become cognizant to him by virtue of his being the sole trustee of said company, and that said Wichita Royalty Company is the owner of said claim.

(Signed) E. E. SCANNELL,
Trustee.

Sworn and subscribed to before me by the said E. E. Scannell, in the capacity stated, this the 16th day of December, A. D. 1930.

(Signed) H. C. RICHARDSON,
Notary Public, Wichita County, Texas.

The above claim was presented to me on the .... day of ....., 1930, and after examining it, I hereby ..... this the .... day of ..... 1930.

.....,
Administrator of the Estate of G. W. Peckham, Deceased.

362 Payments by Wichita Royalty Company Unaccounted for by City National Bank During G. W. Peckham Administration Less Payments by G. W. Peckham on Behalf of Wichita Royalty Company.

To G. W. Peckham by Wichita Royalty Company:

Date		Check No.	Amount
1-19-27		571	$2,000.00
2-19-27		579	2,500.00
3-23-27		591	2,000.00
6-18-27		620	1,200.00
8-16-27		635	1,500.00
10-14-27		650	2,400.00
11-25-27		657	1,800.00
11-25-27	L. F. Wilson Royalty sold to Petroleum Royalties Corporation		5,700.00
2- 1-28	Hattie Vaughn Royalty sold to American Mineral Spirits Company		5,700.00
4-20-28		710	1,850.00
			$26,650.00

By G. W. Peckham for Wichita Royalty Company:

Date	Payee	Principal	Interest	Total
8-31-27	City Nat'l Bank		$500.00	$ 500.00
10-19-27	City Nat'l Bank	$1,014.67	260.00	1,336.00
11-25-27	City Nat'l Bank	1,014.67	485.33	1,500.00
2-15-28	City Nat'l Bank	3,060.67	424.66	3,485.33
				6,821.33

Balance Unaccounted for:

Paid to G. W. Peckham	$26,650.00
Less Disbursements by G. W. Peckham	6,821.33
Balance Due Wichita Royalty Company	$19,828.67

ANSWER OF THE ADMINISTRATOR AND HEIRS OF W. PECKHAM, DECEASED.

Filed in U. S. District Court Dec. 21, 1936.

363 (Title Omitted.)

Pursuant to an order entered in this cause on the 3rd day of December, 1936, come now the interpleaded defendants, W. H. Peckham, administrator, Hazel D. Peckham, William Peckham, George Peckham, and Robert Peckham, and file herewith their answer, and for same say as follows, towit:

They hereby adopt as their pleadings the answer of the complainant City National Bank of Wichita Falls to the cross-complainants' recasted cross complaint and interpleader; its answer to the cross-complainants' recasted pleading against J. T. Harrell, et al; its answer and cross complaint to cross complainants' recasted pleadings against the City National Bank in Wichita Falls, et al; and its answer to the cross-complainants' plea in abatement adopting as their own all allegations of fact, pleadings, defense and cross-complaints of said pleadings of said City National Bank of Wichita Falls.

They have delivered to the attorneys for the cross-complainants copies, of this, their said answer.

Wherefore, the interpleaded defendants, W. H. Peckham, administrator, Hazel D. Peckham, William Peckham, George Peckham, and Robert Peckham, pray that this, their pleading and answer in said cause be filed in accordance with said order of December 3, 1936.

ARCH DAWSON,
Attorney for W. H. Peckham, Administrator, Hazel D. Peckham, William Peckham, George Peckham and Robert Peckham.

364 In the District Court of the United States Northern District of Texas, Wichita Falls, Division.

City National Bank of Wichita Falls, Texas,
vs. No. 358 Equity.
Wichita Royalty Company, et al.

Be It Remembered that the following is a full, true and correct statement in narrative form of all the evidence produced upon the trial of the above numbered and entitled cause, before the Honorable William H. Atwell, United States District Judge, for the Northern District of Texas, on the 2nd day of April, A. D. 1937.

Appearances:

Leslie Humphrey, Tarlton Morrow, both of Wichita Falls, Texas, appearing for the plaintiff bank and the interpleaded defendants, except J. T. Harrell and the Peckhams.

T. R. Boone, Wichita Falls, Texas, appearing for J. T. Harrell.

Guy Rogers, Wichita Falls, Texas, appearing for Wichita Royalty Company & E. E. Scannell.

Arch Dawson, Wichita Falls, Texas, appearing for W. H. Peckham, Administrator, et al.

365 (The following proceedings were had on March 27, 1937, at Wichita Falls, Texas.)

The Court:

According to docket entries in this cause, it reached this Court on July 25, 1936. The dilatory pleas were all ruled by December 3. A commissioner, who was appointed on September 9, 1926, according to the statement of counsel in open Court now, and the Court knows, has

been acting at the behest of parties, taking this testimony which has now been filed in Court, and covered something over three thousand pages, and the cause is set down and is on the trial docket for April 2, 1937, which is about the middle of next week.

Counsel for the defendants advise the Court now that he has found in the testimony so taken some inaccuracies of figures, in so far as his original cross action is concerned, and has discovered some new facts. Instead of pleading accuracy in figures in substitution for inaccurate figures, by appropriate paragraphs in his original cross action, which is the method permitted by the rules, and instead of pleading new facts in a separate instrument, he repleads his entire case, in some fifty or sixty pages.

Counsel for the complainant objects to that method because it would require them to answer the bill all over again, and because same is not in accordance with the equity rules.

I am inclined to hold with them, and also to join with counsel for the respondent, or the complainants
366 in the cross action asking them to show in what paragraph an inaccuracy has been stated, and then to plead that as they conceive to be the accurate way, and of course it would be wrong to deny them the right to plead a new fact. As in the motion, he says he has discovered some payment, or some claim by a certain check, as set down in the motion, and if and when the amendments are offered in that way, I will be glad to pass on them. As is now offered, that particular amendment, leave is denied.

In this order on the disclaimer by Guy Rogers Trustee, and the amended plea to the jurisdiction and motion to remand, and the amended answer of the Wichita Royalty Company, et al, to the complainant's bill, and the reply to the complainant's bill by Charles L. Black and Guy

Rogers, permission is given. But I have erased the pencil permission at the bottom of this order granting these two complainants and certain other defendants in the cross action to answer. I will grant that permission, of course, I will pass on that when they are presented. We like to go according to the rules if we can.

Mr. Humphrey:
I understand the equity rule applied as to answers filed, it will be presumed as no necessity, as I understand it, I do not think there is any necessity of his filing an answer under the equity rules, as to his answers.

The Court:
We go to seed in our state procedure in answering everything the other fellow makes. If he presents answers I will pass upon them at that time.

367 Mr. Morrow:
As to the plea of Judge Rogers and Mr. Black, we have filed a pleading that we do not question the validity of their mortgage to secure their fees and expenses, so there will be no controversy about that issue.

Mr. Rogers:
That is pending the final adjudication of the controversy?

Mr. Morrow:
Yes. It was a lien given to secure future advances as well as prior advances.

(The following proceedings were had on April 2, 1937):

Mr. Rogers:
In view of the confidential nature of the matters between the banking department and this bank, both in respect to the minutes of the bank and Mr. Gilbert's testi-

mony, I am not going into that matter. I am satisfied with the record on the question of solvency as it is.

(Whereupon the following testimony of the witnesses, taken before the commissioner, and documentary evidence, were introduced.)

368 Mr. Rogers:

Let the record show, that I am appearing here subject to the right to file a plea to the jurisdiction of the Court, and a second motion to remand, and appearing on account of the order of the Court that testimony be taken within a specified time.

Mr. Humphrey:

Let it be shown that while the answers as to the recasted pleadings were filed only yesterday, and that the case is not ripe for the taking of testimony, nevertheless, we consent to the taking of testimony, with the understanding that if the testimony is not finished by the first of January, that either of the parties shall have the right to continue the taking of the testimony pursuant to the regular rules in equity pertaining thereto, after the first of January.

Mr. Humphrey:

The plaintiff, City National Bank offers in evidence the following documentary evidence; first, the original declaration of trust of the Wichita Royalty Company, wherein R. R. Robertson was designated as trustee, dated the first day of June, A. D. 1920, recorded in the deed records of Wichita County, Volume .... Page ....; filed for record August 27, 1920, at 1:50 P. M. with the county clerk of Wichita County, Texas, and which instrument appears on pages 737 and 746 of the transcript of evidence on the former appeal. (Said instrument marked "Plaintiff's Exhibit No. 1, and reading as follows):

369 PLAINTIFF'S EXHIBIT 1.

Wichita Royalty Co. — Doc. of Trust.

The State of Texas,
County of Wichita.

This Declaration of Trust, made this First day of June, A. D. 1920, by R. R. Robertson of Wichita County, Texas. (hereafter called Trustee), Witnesseth:

First: That this Trust shall be designated and known as the Wichita Royalty Company, with principal office at Wichita Falls, Texas.

Second: That the said Trustee shall hold all the funds and property now or hereafter held by or paid to, or transferred or conveyed to him or his successor or successors as trustee hereunder in trust for the purpose, with the powers and subject to the limitations hereinafter declared, for the benefit of the cestui que trustent, (hereinafter called the stockholders), and it is hereby expressly declared that a trust, and not a partnership or joint stock association is hereby created; that neither the trustee nor the stockholders shall ever be personally liable hereunder as partners or otherwise, but that for all debts the trustee shall be liable as such to the extent of the trust funds only. In all contracts or instruments creating liability, it shall be expressly stipulated that neither the trustee nor the stockholders shall be personally liable.

370 Third: The general purpose of this company are to buy and sell oil and gas royalties and other oil and gas properties.

Fourth: The capital stock of this trust shall be One Million Dollars ($1,000,000.00) divided into one Million (1,000,000) shares of the par value of One Dollar ($1.00) per share.

Fifth: The certificate of stock shall be issued and signed by the Trustee, and shall be in substantially the following form, to-wit:

WICHITA ROYALTY COMPANY,
Wichita Falls, Texas.

(A common law Trust). Members Certificate of Interest.

This is to certify that ..... is the owner of ..... Fully paid shares of beneficial interest in the Wichita Royalty Company, a common Law Trust, transferable only on the books of the trust by the owner thereof in person or by duly authorized agent upon the surrender of this certificate properly indorsed.

This certificate of interest is subject to the provisions and covenants contained in the Declaration of Trust of the Wichita Royalty Company, dated the first day of June, A. D. 1920, and any amendments thereto, and the by-laws of said trust, present or future, and the provisions hereof.

No member of said trust, or owner or holder of this certificate, as such, shall have any authority, power or right whatsoever to do, or transact any business whatever for, on behalf of, or binding on the trust, or any member thereof, and no member of this trust shall be per-
371 sonally liable for any debts, covenants, demands contracts of any kind or torts of this trust beyond the payments in full of the price of which his share or shares were sold to him by the trust.

This certificate shall be the sole and only evidence of membership in said trust.

Witness the signature of the Trustee of said trust, this ..... day of ....., 19.....

All of the conditions and limitations stated in the above form shall be binding on each stockholder, his h. .rs, assigns and legal representatives, or any person holding certificates, and such certificates shall be transferred only on the books of the trust in accordance with the Declaration of Trust and the By-laws. Stockholders whose certificates stand in their names on the books of the trust shall alone be considered within the term of this instrument, and shall alone be entitled to receive dividends or have the rights of owners.

Any stockholder may at any time transfer or sell his share or shares, or any of them but each holder of a share hereunder, or of a certificate therefor, shall be held by the fact of his acceptance of it to have assented to this trust, this Declaration of Trust and the By-laws, and to all instructions given and acts performed in pursuance thereof.

372 In case of loss or accident destruction of the certificate of stock, the trustee may cause a new certificate to be issued on such terms as he may see fit.

Sixth: Stockholder in this trust shall have no legal right to the trust property of funds held from time to time by the trustee, as herein provided for, and especially shall have no right to call for any partition of the trust property or funds, or dissolution of this trust, but the shares shall be personal property carrying the right of division of the profits; and at the termination of said trust by expiration of the period fixed for its existence or dissolution otherwise, the stockholder shall be entitled to a division of the principal and profits in due proportion to the number of shares held by each.

Seventh: The death, insolvency or bankruptcy of a stockholder of this trust, or the transfer of his interest by sale, gift, devise, descent, or operation of law, or otherwise, during the life of the trust shall not work a dissolu-

tion thereof or have any effect upon the same, its operation or mode of business; nor shall it entitle his representatives, heirs, or assigns, to an account or to any action in the Courts, in law or equity, or otherwise, against the company, its stockholders, trustee, officers, or its property or assets or business operations, all of which shall remain intact and undisturbed thereby; but they shall simply succeed to the right of the original stockholder to the certificate of membership and the shares
373 it represents, subject to this Declaration of Trusts, and the by-laws, present and future.

Eighth: The entire affairs of this trust shall be managed by one trustee, who shall own at least one certificate of membership for not less than one Share, The Trustee may from time to time hire suitable offices for the transaction of the business of this trust; and he may appoint, remove or reappoint such officers, agents and other assistants as he may think best, define their duties and fix their compensation provided, however, that any person to be eligible to hold office of Vice-President, Secretary or Treasurer must be the owner and holder of at least one certificate of membership in this trust for not less than one share.

The title to all property acquired or to be acquired from time to time by this trust, and all investments shall be made and held in the name of the Trustee as such trustee, or his successors or successor, in office. The trustee in his capacity as such may sue and be sued in any Court of law or equity.

The trustee shall have full and exclusive power and authority to conduct the business and affairs of this trust, to purchase contract for, lease, or otherwise acquire, any property necessary or proper for the purpose of the trust; to sell and convey all or any part of the property of the trust; to borrow money on the credit of the trust; and, if he deems advisable to execute notes therefor secured by

a mortgage or deed of trust upon the property of the company, and generally to do all things which
374 in his judgment is necessary and prudent in the management and conduct of the business of the company; and he shall receive compensation commensurate with his services, to be determined by the officers and as provided by the by-laws.

Any debt incurred by the trustee shall be charged on the property of the trust in preference to the claim or claims or any stockholder as such; the trustee is authorized in the conduct of the business, to sell in due course of business the property, real or personal, of the trust, free of any incumbrance whatsoever, provided of course that any mortgaged property shall be sold in conformity with the terms of the mortgage or deed of trust theretofore given.

In the event the trustee should die, resign, refuse or become incapable to act as trustee, the Judge of the District Court of the Thirtieth Judicial District, comprising at present the counties of Wichita, Archer, and Clay, State of Texas, shall fill the vacancy created thereby by the appointment of a person qualified under this Declaration of Trust to act as trustee.

The Trustee may select a manager or managers for all or any part of the property or business of the trust, and may employ such agents, servants and employees, fixing their compensation and entrusting them with such authority and duties as he may deem wise; and the
375 trustee may appoint or contract with any person, firm, corporation, joint stock association, trust or company as fiscal agents for the sale of the beneficial interests and shares, or may sell all or part of such shares to such fiscal agents upon such terms and conditions of sale as may be fixed by contract entered into by such fiscal agents and the trustee.

The trustee shall declare dividends from the net income of the trust quarterly, or oftener, and his decision as to the amounts of dividends shall be final; provided, however, that at least once each year the total net profits arising from the operation of this trust shall be distributed among the stockholders in the ratio that the number of shares owned by each bears to the total number of shares then issued and outstanding.

Ninth: The Trustee, or his successor or successors, shall have no power or authority to bind the stockholders, or any of them personally; and in every written contract he shall enter into relating to the business of this trust, its property or any part thereof, reference shall be made to this Declaration of Trust; and the person, firm, joint stock association, trust company or corporation so contracting with him shall look only to the funds and property, legal and equitable, of the trust for the payment of any debt, damage, judgment or decree, or any money that may become due and payable in any way by reason thereof; and neither the trustee nor the stock-
376 holders, present or future, shall be personally liable therefor, or for any debt incurred, or any engagement or contract made by the trustee or any officer, agent or servant under him on behalf of the trust.

Furthermore, the funds and property of the trust of every character shall stand primarily charged with the burden of paying any claim or claims or money demand established or existing on account of the operation and business of the trust, whether founded on contract or tort, to the end that the stockholders may be protected from personal liability on account thereof.

In all deeds and conveyances to the trustee, or to his successor or successors, it shall be set forth that such grant, conveyance or transfer is to him as trustee of the Wichita Royalty Company, to be held subject to this De-

claration of Trust and the by-laws of the company, present or future.

Tenth: The Trustee may adopt such by-laws in harmony herewith as he thinks proper. This Declaration of Trust and the by-laws so adopted shall be signed and acknowledged by the trustee in the manner required by the laws of the State of Texas for the registration of conveyances of real estate, to the end that the same may be recorded if it be deemed necessary or expedient.

377 Eleventh: The Trustee, if at any time he deems it judicious so to do, may without the consent of the stockholders, convey the trust property and funds to another trustee or to a trust company, bank or corporation, subject to the terms and conditions of a contract to be entered into, which shall provide among other things, that such other trustee, trust company, bank or corporation in managing and conducting the business and affairs of this trust shall conform to this Declaration of Trust and the by-laws, present and future.

And the instrument setting forth such amendment or conveyance shall be signed and acknowledged by such trustee and recorded in the office of the County Clerk of Wichita County, Texas. Such instrument shall be conclusive of the existence of all such facts and of compliance with all prerequisites necessary to the validity of such amendment or conveyance, whether stated in such instrument or not, upon all questions as to title or affecting the rights of third persons.

Twelfth: The Trustee shall be responsible only for his own wilful and corrupt breach of trust, and not for any honest error of judgment.

Thirteenth: No assessment shall ever be made upon the stockholders, nor shall they ever be personally liable in any event, or have any rights hereunder except as provided herein.

Fourteenth: At any ..... up on the expiration of twenty years after the death of the present trustee, R. R. Robertson, the trustee shall terminate this trust by dividing the trust property and funds among the
378 stockholders, being first duly indemnified for any outstanding obligations or liability, and shall thereupon be forthwith discharged.

In Testimony whereof, the said R. R. Robertson, on behalf of himself and his successors, has hereunto set his hand in token of his acceptance of the trust herein created, and in token of his assent to and approval of the terms hereof.

R. R. ROBERTSON.

The State of Texas,
County of Wichita.

Before me the undersigned authority, a Notary Public in and for said County and State on this day personally appeared R. R. Robertson, to me well known to be the person whose name is subscribed to the above and foregoing instrument, and acknowledged to me that he executed the same for the purposes and for the consideration therein stated.

Witness my hand and official seal this the 1st day of June, A. D. 1920.

A. W. GILLILAND,
(Seal) Notary Public, Wichita County, Texas.

Filed for record Aug. 27th, 1920, at 1:50 P. M.

Recorded Sept. 1, 1920, at 2:50 P. M.

W. T. HARRIS,
Clerk County Court Wichita County, Texas.
By E. HALL,
Deputy.

379 Mr. Humphrey:

We next offer in evidence statement filed by R. R. Robertson, Trustee, on April 13, 1922, with the County Clerk, which appears at Page 747 of the transcript of evidence on the former appeal.

(Marked "Plaintiff's Exhibit No. 2").

PLAINTIFF'S EXHIBIT 2.

Statement.

State of Texas,
County of Wichita.

I, R. R. Robertson, Trustee for the Wichita Royalty Company, a common law trust acting under a Declaration of trust dated June 1st, 1920, and recorded in Volume 168, page 56-8 of the deed Records of Wichita County, Texas, do hereby certify that the following paragraphs taken from the by laws of said Wichita Royalty Company now in force and effect and which were adopted under the declaration of trust are the sole and only portions of said by-laws providing for compensation of the officers of said company, and covering the promotion thereof,

Section 3, of Article III. The Trustee shall define the duties of the officers of this trust, as well as any managers, agents, servants or other employees he may appoint, fix their compensation, and terminate their tenure office or period of service when he deems it necessary or to the best interest of this trust so to do.

380 Section 3 of Article IV. The Trustee shall receive compensation for his services commensurate with the value thereof to the stockholder of this trust, such compensation to be fixed from time to time as the stock of the company is issued and the amount thereof shall be determined by a majority of vote of the officers mentioned in Section 2, Article III hereof.

Article v. Section 1 for the purpose of further compensating the officers herein (And which shall be considered when fixing salaries) it is provided that each of said officers shall have the right to purchase stock in the company at its par value as hereinafter stated.

After 500,000 shares of the capital stock of the company have been sold and are outstanding, then said officers shall have the option of purchasing at the par value thereof and there is now allotted to them at par, stock in said company as follows:

To the trustee	25,000 shares
To the Vice President ..	5,000 shares
To the Secretary	2,500 shares
To the Treasurer	2,500 shares

And after 750,000 shares of the capital stock of the company have been sold and are outstanding, then said officers shall have the option of purchasing at
381 the par value thereof, and there is now alloted to them at par, additional stock in said company as follows:

To the trustee	25,000 shares
To the Vice President ..	5,000 shares
To the Secretary	2,500 shares
To the Treasurer	2,500 shares

Provided that if the officers of Secretary and Treasurer are combined in one person then said officer shall be entitled to the allotment for both Secretary and Treasurer.

Witness my hand this the 13th day of April, 1922.

R. R. ROBERTSON,
Trustee.

State of Texas,
County of Wichita.

Before me, the undersigned authority in and for Wichita County, Texas, on this day personally appeared R. R. Robertson, Trustee for the Wichita Royalty Company, and acknowledged to me that he executed the same for the purpose and consideration therein expressed, and the capacity therein stated.

Given under my hand and seal of office this the 13th day of April, 1922.

N. M. CLIFFORD,
(Seal) Notary Public, Wichita County, Texas.

Filed for Record April 13, 1922, at 10:14 AM.

Recorded April 21, 1922, at 3.7 P.M.

382 Mr. Humphrey:

Next offer in evidence the appointment of G. W. Peckham, Trustee, to take the place of R. R. Robertson, resigned. Appointment made by the District Judge, H. R. Wilson, who was at that time judge of the Thirtieth District Court of Wichita County, Texas, which appointment was filed for record on January 8, 1923, being marked "Plaintiff's Exhibit No. 3" in this cause.

PLAINTIFF'S EXHIBIT 3.

Said exhibit showing the appointment of G. W. Peckham, trustee, in accordance with the provisions of the trust agreement, as follows: In the event the trustee should die, resign, refuse or become incapable to act as trustee, the Judge of the District Court of the Thirtieth Judicial District, comprising at present the counties of

Wichita, Archer, Clay, State of Texas, shall fill the vacancy created thereby by the appointment of a person qualified under this declaration of trust to act as trustee.

Dated January 2, 1923, and signed by H. R. Wilson, Judge of the District Court for the Thirtieth Judicial District of Texas.

Acknowledged by H. R. Wilson, before R. O. Kenley, Notary Public in and for Wichita County, Texas, January 2, 1923.

Filed for record January 8, 1923, at 4:21 P. M.

Recorded January 15, 1923, at 10:48 A. M.

383 Mr. Humphrey:

We next offer in evidence acceptance of G. W. Peckham as Trustee, filed January 8, 1923, marked "Plaintiff's Exhibit No. 4."

PLAINTIFF'S EXHIBIT 4.

The acceptance of G. W. Peckham being dated January 2, 1923, acknowledged by G. W. Peckham on January 2, 1920, before Gertrude Priest Cavanagh, Notary Public in and for Wichita County, Texas.

Filed for record January 8, 1923, at 4:32 P. M.

Recorded January 15, 1923, at 11:08 A. M.

Mr. Humphrey:

Next offer in evidence the resignation of R. R. Robertson, the original trustee, marked "Plaintiff's Exhibit No. 5".

PLAINTIFF'S EXHIBIT 5.

Said resignation being in accordance with the trust agreement, and requesting H. R. Wilson, Judge of the Thirtieth Judicial District of Texas to appoint a suitable person as successor.

Dated January 2, 1923.

Acknowledged on January 2, 1923, before Eula Logan, Notary Public in and for Wichita County, Texas.

Filed for record January 8, 1923, at 4:23 P. M.

Recorded January 15, 1923, at 11:30 A. M.

384 Mr. Humphrey:

Next offer in evidence the appointment of E. E. Scannell, marked "PLAINTIFF'S EXHIEIT No. 6," and showing that G. W. Peckham the substitute trustee died on the 7th day of November, 1929, and that E. E. Scannell was duly appointed by Allen D. Montgomery, judge of the Thirtieth District Court, as substitute trustee of the Wichita Royalty Company, on the 12th day of November, 1929.

Duly acknowledged by A. D. Montgomery, on November 12, 1929, before W. H. Sanford, Notary Public in and for Wichita County, Texas.

Filed for record November 13, 1929, at 11:55 A. M.

Recorded November 15, 1929, at 1:30 P. M.

Mr. Humphrey:

Next offer in evidence the acceptance of E. E. Scannell as trustee, being marked "PLAINTIFF'S EXHIBIT No. 7" and filed for record November 15, 1929, and acknowledged before W. H. Sanford Notary Public, Wichita County,

Texas, on November 12, 1929. Recorded November 15, 1929.

Mr. Humphrey:

Next offer in evidence note of the Wichita Royalty Company due sixty days after date, dated June 6, 1930, in the sum of $22,000.00, signed by E. E. Scannell, trustee, Wichita Royalty Company, "Plaintiff's Exhibit No. 8,,.

385 PLAINTIFF'S EXHIBIT No. 8.

393.33

$22,000
22 29333
22 31998

Wichita Falls, Texas June 26, 1930.

Sixty days after date, waiving demand, protest and notice of non-payment, I, we or either of us, jointly and severally promise to pay to the City National Bank of Wichita Falls, Texas, Twenty-two thousand Dollars At the office of the City National Bank of Wichita Falls, Texas, with interest at the rate of eight percent per annum from date until paid, and ten percent additional on the principal and interest shall be added for attorney's fees if sued upon or placed in the hands of an attorney for collection, or collected through the probate Court, I, we or either of us, jointly and severally as makers, indorsers, sureties, or guarantors hereby guarantee prompt payment of the debt evidenced by this note, and waive demand, protest and notice of non-payment. Value Received.

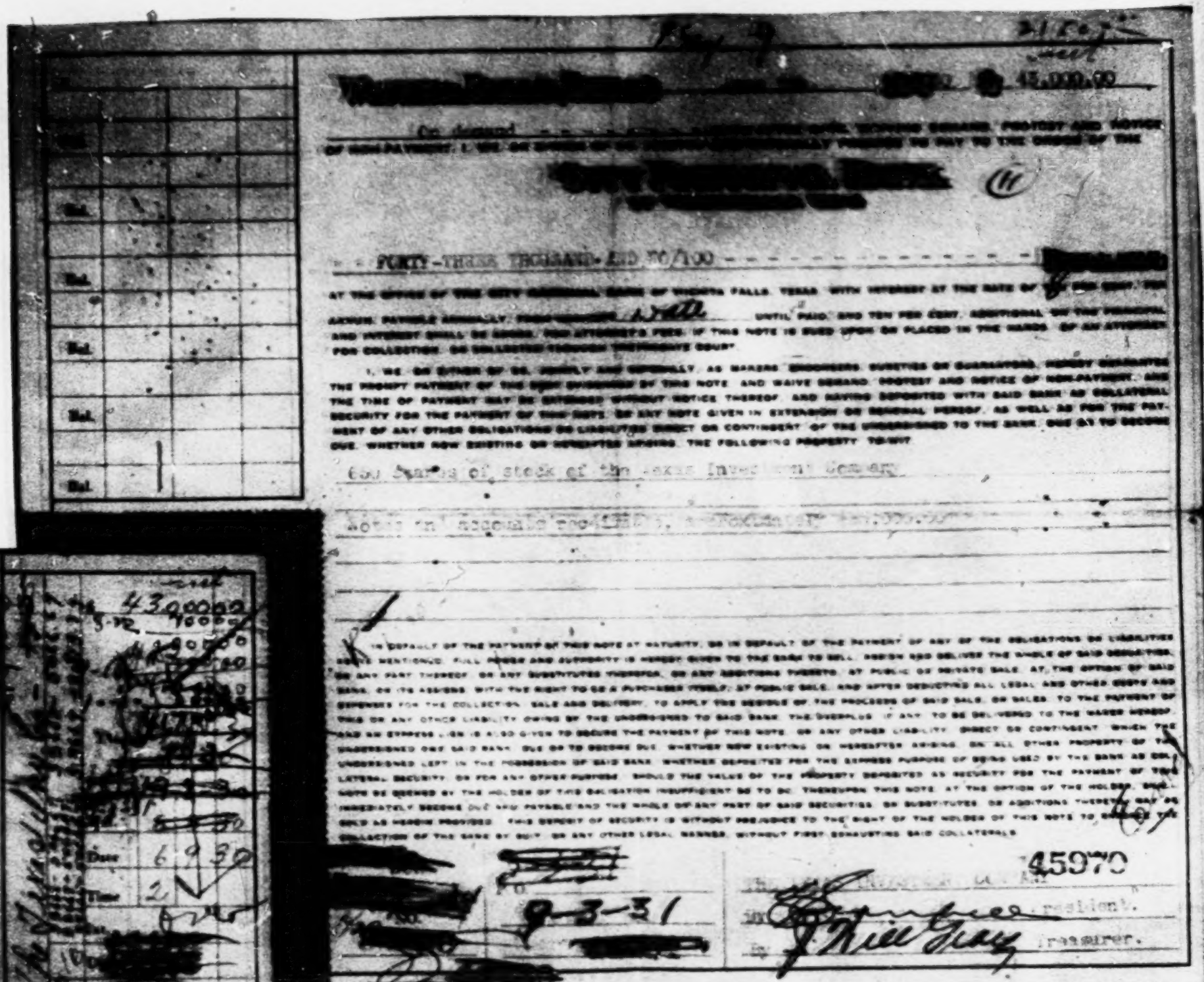
R. WICHITA ROYALTY CO.,
By E. E. SCANNELL,
Trustee.

Due 8-25-30, P. O. No. 7/15 35819, (On back thereof) Mar. 31, 1931, 26.65 Court Cost.

386 Mr. Humphrey:

We next offer in evidence note of the Texas Investment Company, payable to the order of the City National Bank of Wichita Falls, dated June 9, 1930, in the principal sum of $43,000.00, signed by the Texas Investment Company, by E. E. Scannell president, and by J. Will Gray Treasurer, with the credits appearing on the back of it, and indorsed on the back, "J. T. Harrell, Wichita Royalty Company by E. E. Scannell Trustee, and J. A. Kemp."

(Instrument marked "Plaintiff's Exhibit No. 9, reading as follows:)



$45,000.00

FORTY-THREE THOUSAND AND NO/100

AT THE OFFICE OF THE CITY NATIONAL BANK OF WICHITA FALLS, TEXAS, WITH INTEREST AT THE RATE OF

UNTIL PAID, AND TEN PER CENT, ADDITIONAL ON THE PRINCIPAL AND INTEREST SHALL BE DUE, FOR ATTORNEY'S FEES, IF THIS NOTE IS SUED UPON OR PLACED IN THE HANDS OF AN ATTORNEY FOR COLLECTION, OR COLLECTED THROUGH THE PROBATE COURT.

I, WE, OR EITHER OF US, JOINTLY AND SEVERALLY, AS MAKERS, INDORSERS, SURETIES OR GUARANTORS, HEREBY GUARANTEE THE PROMPT PAYMENT OF THE SUM EVIDENCED BY THIS NOTE, AND WAIVE DEMAND, PROTEST AND NOTICE OF NON-PAYMENT, AND THE TIME OF PAYMENT MAY BE EXTENDED WITHOUT NOTICE THEREOF, AND HAVING DEPOSITED WITH SAID BANK AS COLLATERAL SECURITY FOR THE PAYMENT OF THIS NOTE, OR ANY NOTE GIVEN IN EXTENSION OR RENEWAL HEREOF, AS WELL AS FOR THE PAYMENT OF ANY OTHER OBLIGATIONS OR LIABILITIES DIRECT OR CONTINGENT OF THE UNDERSIGNED TO THE BANK, DUE OR TO BECOME DUE, WHETHER NOW EXISTING OR HEREAFTER ARISING, THE FOLLOWING PROPERTY, TO-WIT:

(50) Shares of stock of the Texas Investment Company

Note in accounts pledged, $45,000.00

IN DEFAULT OF THE PAYMENT OF THIS NOTE AT MATURITY, OR IN DEFAULT OF THE PAYMENT OF ANY OF THE OBLIGATIONS OR LIABILITIES ABOVE MENTIONED, FULL POWER AND AUTHORITY IS HEREBY GIVEN TO THE BANK TO SELL, ASSIGN AND DELIVER THE WHOLE OF SAID COLLATERAL OR ANY PART THEREOF, OR ANY SUBSTITUTES THEREFOR, OR ANY ADDITIONS THERETO, AT PUBLIC OR PRIVATE SALE, AT THE OPTION OF SAID BANK, OR ITS ASSIGNS, WITH THE RIGHT TO BE A PURCHASER ITSELF, AT PUBLIC SALE, AND AFTER DEDUCTING ALL LEGAL AND OTHER COSTS AND EXPENSES FOR THE COLLECTION, SALE AND DELIVERY, TO APPLY THE RESIDUE OF THE PROCEEDS OF SAID SALE, OR SALES, TO THE PAYMENT OF THIS OR ANY OTHER LIABILITY OWING BY THE UNDERSIGNED TO SAID BANK, THE SURPLUS, IF ANY, TO BE DELIVERED TO THE MAKER HEREOF, AND AN EXPRESS LIEN IS ALSO GIVEN TO SECURE THE PAYMENT OF THIS NOTE, OR ANY OTHER LIABILITY, DIRECT OR CONTINGENT, WHICH THE UNDERSIGNED OWE SAID BANK, DUE OR TO BECOME DUE, WHETHER NOW EXISTING OR HEREAFTER ARISING, ON ALL OTHER PROPERTY OF THE UNDERSIGNED LEFT IN THE POSSESSION OF SAID BANK, WHETHER DEPOSITED FOR THE EXPRESS PURPOSE OF BEING USED BY THE BANK AS COLLATERAL SECURITY, OR FOR ANY OTHER PURPOSE. SHOULD THE VALUE OF THE PROPERTY DEPOSITED AS SECURITY FOR THE PAYMENT OF THIS NOTE BE DEEMED BY THE HOLDER OF THIS OBLIGATION INSUFFICIENT SO TO DO, THEREUPON THIS NOTE, AT THE OPTION OF THE HOLDER, SHALL IMMEDIATELY BECOME DUE AND PAYABLE AND THE WHOLE OF ANY PART OF SAID SECURITIES, OR SUBSTITUTES OR ADDITIONS THERETO, MAY BE SOLD AS HEREIN PROVIDED. THIS DEPOSIT OF SECURITY IS WITHOUT PREJUDICE TO THE RIGHT OF THE HOLDER OF THIS NOTE TO ENFORCE THE COLLECTION OF THE SAME BY SUIT, OR ANY OTHER LEGAL MANNER, WITHOUT FIRST EXHAUSTING SAID COLLATERALS.

45970

9-3-31

President.

Treasurer.

389 Mr. Rogers:

The Wichita Royalty Company and E. E. Scannell, trustee, object to the introduction of the note for the reason that the note is not sued upon herein, no cause of action is asserted thereon by the bank or other parties against the Wichita Royalty Company, or its trustee. The record affirmatively shows that the trustee of the trust was without power or authority to indorse the commercial paper of the third party.

Mr. Rogers:

I wish to urge the objection at this time, along with several others hereafter, which generally relate to the want of authority for this dual dealing as inadmissible evidence, the objection being that this trust could not become bound by the indorsement of the commercial paper of another; it is beyond the scope of the authority of the trust to indorse that note.

(Which objection was by the Court overruled, to which the defendant then and there excepted).

Mr. Humphrey:

I next offer, accompanying the note, the pledge agreement of the Texas Investment Company, dated the 24th day of January, 1930, signed by the Texas Investment Company of Wichita Falls, by E. E. Scannell, President; whereby there was pledged as security for the payment of this note, certain corporate stocks, vendor lien notes, contracts, and other collateral.

390 PLAINTIFF'S EXHIBIT 10.

State of Texas,
County of Wichita.

Having executed its note to The City National Bank of Wichita Falls, Texas, and having deposited and pledged with the said bank as collateral for the prompt payment

at maturity of any and all notes now executed, or hereafter to be executed, together with any and all other liability or liabilities of the undersigned as prin-
391 cipal debtor or otherwise, due or to become due, or of any that may hereafter be contracted with the said bank, or its assigns, the following collateral, to-wit:

Certificates Nos. 3, 4 and 5 for Two Hundred Fifty shares of the capital stock of The Texas Investment Company of Wichita Falls, par val. $25,000.00. All vendor lien notes and contracts for the sale of lots in Marlborough Addition approximating $29,000.00.

Contracts between G. W. Peckham, J. A. Kemp, J. T. Harrell and the City of Wichita Falls providing for the purchase by the City of Wichita Falls of the sewer and water lines in Marlborough Addition, approximating $16,500.00, the market value of which is estimated by the undersigned now at $..... . It Is Hereby Agreed; That The City National Bank, its successors or assigns, or

The holder of said note shall not be liable for failure to collect said collaterals, or for failure to present or protest same, or to give notice or use thereon, and if this note, or any other liability of the undersigned be not paid at maturity, is hereby authorized, without notice to the undersigned, to sell either at public sale or private sale, without advertising same or giving any notice thereof, through a broker or otherwise, the whole or any part of said collaterals, with the right of becoming the purchaser and absolute owner thereof at any such sale, and when said collaterals are sold, to transfer, in-
392 dorse, assign and deliver up the same, and after deducting all costs, attorneys fees and expenses of collection, sale and delivery, including a commission of two and one-half percent on the gross amount of the proceeds of such sale, to apply the residue of such proceeds to pay any or all of said liabilities as said holder

shall deem proper, returning the surplus, if any, to the undersigned. If the net proceeds from the sale of said collaterals shall not be sufficient to pay all the liabilities secured by said collaterals, we, and each of us, respectively, agree to pay upon demand to the holder thereof the balance due upon such of them as are liabilities of each of us, respectively.

The said holder hereof shall be entitled to collect any interest accruing upon, or payments maturing on the principal, of said collateral, and any dividends, whether cash, stock, liquidating or any other kind, upon any of said collaterals, and any and all other interests, income, profits, moneys, or other things of value, whatsoever, accruing or becoming due upon said collaterals, and may sell all rights to subscribe for stock or other things accruing upon said collaterals, in the manner hereinabove provided for sales of collaterals, and shall apply the proceeds as similarly provided above.

As often as the market price of said collaterals (or in the event of no market price, the actual value thereof) shall, before the maturity of our note or any other liability of the undersigned to the holder thereof, fall
393 below the present market value of said collaterals (or in the event of no market value, the actual value thereof, the determination of which shall be vested solely in the holder of the notes secured hereby), the undersigned on demand will within twenty-four hours thereafter deposit with the holder additional collaterals to be approved by said holder, sufficient to cover the amount of such depreciation in value, and in default thereof our note and any other liability of the undersigned to the holder thereof shall, at the election of the holder thereof, become instantly due and payable, and all the foregoing rights in regard to said collaterals shall at once be exercisable. In case of any exchange or addition to the collaterals above named, the new collaterals shall be sub-

ject to this agreement the same as if part of the original collaterals.

All calls, assessments, charges and taxes on said collaterals shall be paid by the undersigned, and on the failure after ten days' written notice to pay the same, the holder may declare all of said liabilities secured hereunder immediately due and payable.

No additional security, personal or collateral, taken for payment of our note or any other liability of the undersigned, shall in any manner affect the security or any other liability of any other person liable for the payment of our note or such other liability. Said holder shall be entitled, as further security for the payment of
394 our note and any other liability of the undersigned to a first lien upon any drafts, bills of exchange or bills receivable held for collection or safekeeping for the account of the undersigned, and also upon any and all other property left in possession of the holder hereof and also upon any money found on deposit with said holder to the credit of the undersigned, and may retain and apply said money, securities and property or proceeds of such collections to the payment of our note and other liabilities of the undersigned.

Witness its hand at Wichita Falls, Texas, this 24th day of January, A. D. 1930.

TEXAS INVESTMENT COMPANY OF WICHITA FALLS,
By E. E. SCANNELL,
President.

(On back thereof) Collateral to Secure Obligation of .....

Mr. Rogers:

The same parties make the same objection to the introduction of the pledge agreement that has been made

to the introduction of the note, the security for which the agreement was apparently made. No predicate being laid for the introduction of either the note or the pledge agreement.

(Which objection was by the Court overruled, to which the defendant then and there excepted.)

395 Mr. Humphrey:

We next offer in evidence certificate of stock, one hundred and twenty-five shares of the Texas Investment Company, being Certificate number 4, showing to have been transferred from the estate of G. W. Peckham, Administrator, to the E. E. Scannell, Trustee, for the Wichita Royalty Company, Being Certificate No. 4, signed by E. E. Scannell as President and by A. B. Duncan, Secretary, and dated the 24th of January, 1930, indorsed on the back E. E. Scannell, Trustee for the Wichita Royalty Company. Also the stub.

(Said certificate being marked "PLAINTIFF'S EXHIBIT No. 11" and being the usual and ordinary form wherein E. E. Scannell was issued one hundred and twenty-five shares of capital stock of the Texas Investment Company, which stock was duly issued and transferred as a pledge to the City National Bank).

PLAINTIFF'S EXHIBIT 11a being the stub, shows for one hundred and twenty-five shares to E. E. Scannell, Trustee for Wichita Royalty Company, being certificate No. 4, dated January 24, 1930, transferred from W. H. Peckham, Administrator for G. W. Peckham estate. Dated January 24, 1930. Showing receipt of certificate No. 4 for one hundred and twenty-five shares, dated the 24th of January, 1930, signed by E. E. Scannell, trustee Wichita Royalty Company. Also showing $2.50 documentary stamps.

396 Mr. Humphrey:

We next offer in evidence another certificate, No. 11, for Three hundred and twenty-five shares, issued to E. E. Scannell, trustee for Wichita Royalty Company, dated March 17, 1930, signed by E. E. Scannell as president, and indorsed by E. E. Scannell as trustee, on the back. Also the stub.

(Said instruments being marked "PLAINTIFF'S EXHIBIT 12" and "12a").

Plaintiff's Exhibit 12 being a certificate in the usual and ordinary form.

Plaintiff's Exhibit 12a being the stub, to certificate No. 11. Has written on it, "No tax due". For three hundred and twenty-five shares issued to E. E. Scannell, trustee Wichita Royalty Company, dated March 17, 1930, transferred from E. E. Scannell, trustee.

Mr. Humphrey:

We next offer in evidence certificate No. 1, showing the cancellation marks thereon, issued by E. E. Scannell, trustee on the 24th of January, 1930, as President of the Company to W. H. Peckham, the administrator of the estate of G. W. Peckham, 125 shares. The transfer thereon by George W. Peckham, by W. H. Peckham, administrator to E. E. Scannell, trustee for the Wichita Royalty Company, which transfer is dated January 24, 1930. Also offer the stub.

(Said instruments being marked "PLAINTIFF'S EXHIBITS 13 and 13a"):

The certificate being in the usual and ordinary form. Dated January 24, 1930. Signed by A. B. Duncan, Secretary, and E. E. Scannell, President.

397 Plaintiff's Exhibit 13a being stub, to certificate 1, for 125 shares issued to G. W. Peckham, dated January 24, 1930. Showing $6.25 in documentary stamps.

PLAINTIFF'S EXHIBIT 14.

Balance Sheet Wichita Royalty Company, Wichita Falls, Texas, at the Close of Business November 30, 1924.

Liabilities.

Contracts Payable—			
For purchase of royalties.....		$6,250.00	
Less Escrow Payments applicable		5,847.89	$402.11
Nominal—			
Capital Stock Authorized	$1,000,000.00		
Less Unissued ...	185,085.00	$814,915.00	
Surplus November 30, 1924—			
Per Company Books		48,441.61	863,356.61
			$863,758.72

Assets.

Cash on Deposit—			
Security National Bank	$137.61		
City National Bank	490.87	$ 628.48	
Accounts Receivable—			
For sale of Oil and Gas.....		$4,340.67	

Notes Receivable—			
For sale of Automobile	225.00		
For sale of Stock...	1,587.90	1,812.90	$6,782.05
Producing Royalties Owned—			
Per Books and Engineer's Valuation Reports			854,869.42
Permanent—			
Automobile less depreciation..		1,080.00	
Office Furniture less depreciation		1,027.25	2,107.25
			$863,758.72

399 Mr. Rogers:

The Wichita Royalty Company and E. E. Scannell, as Trustee, object to the introduction of the Certificates of stock in the corporation, Texas Investment Company and the stubs attached to such certificates, for the reason that the declaration of trust affirmatively shows that the issuance to the plaintiff by the trustee of certificates of stock in a corporation is beyond his authority as trustee, to bind the trust estate. It is not shown that the corporation was even engaged in the oil and gas business, to which alone the trustee was authorized to deal. No matter connected with the issuance of the certificates that bind the trust.

Mr. Rogers:

We object to the introduction of the balance sheets, being Exhibit 14, for the reason that their authority has not been estimated.

Mr. Humphrey:

They are parts of the evidence we offered at the other trial, they came from your custody.

Mr. Rogers:
No proper predicate has been laid for their introduction.

Mr. Humphrey:
I will have to prove that up later.

(Which objection was by the Court overruled, to which the defendant then and there excepted.)

Mr. Humphrey:
Next offer in evidence balance sheet of the Wichita Royalty Company at the close of business April 30, 1928.

(Said instrument marked "Plaintiff's Exhibit 15" and reading as follows:)

400 PLAINTIFF'S EXHIBIT 15.

Balance Sheet Wichita Royalty Company, Wichita Falls, Texas, At the Close of Business April 30, 1928.

Assets.

Cash In Banks—		
City National Bank	$13.45	
Security National Bank	80.67	$ 94.12
Accounts Receivable—		
For estimated oil runs accrued, but not yet paid for		1,036.74
Property Account—		
Per Books and Engineer's Valuation Reports		987,460.94
Permanent—		
Office Furniture, less depreciation		794.81
		$989,386.61

Liabilities.

Notes Payable—		
Per Company Books		$ 51,095.68
Reserve—		
For Depletion of Royalties		539,039.03
Nominal—		
Capital Stock Authorized	$1,000,000.00	
Less Unissued	185,085.00	814,915.00
Surplus—		
April 30, 1928	(—)	415,663.10
		$989,386.61

Mr. Humphrey:
I will have to prove those up later on in the file, they came from your custody, and I think Mr. Scannell said they were correct.

Mr. Humphrey:
Now, give me the charter of the Texas Investment Company and the amendments and by-laws.

Mr. Humphrey:
First offer in evidence the by-laws of the Texas Investment Company, dated 24th day of January, 1930, adopted by J. T. Harrell, E. E. Scannell, and J. Will Gray.

(Marked "Plaintiff's Exhibit 16" and reading as follows:)

PLAINTIFF'S EXHIBIT 16.

The Texas Investment Company of Wichita Falls.

By-Laws.

402 Offices.

1. The principal office of this company is in the city of Wichita Falls, Wichita County, and State of Texas.

2. This corporation may have an office in other places in the State as designated by the Board of Directors from time to time.

Seal.

3. The corporate seal shall have inscribed thereon the name of the corporation, the year of its organization, and the words, "Corporate Seal, State of Texas." Seal may be used by causing it, or a facsimile thereof, to be impressed or affixed or reproduced, or otherwise.

Stockholders' Meetings.

4. Stockholders' meetings shall be held at the principal office of said corporation in Wichita Falls, Texas.

5. An annual meeting of the stockholders, after the first meeting of the incorporators, shall be held on the first Tuesday in January of each year, beginning the first Tuesday in January, A. D. 1931, if not a legal holiday, and if a legal holiday, then on the next secular day following, at three p. m. on said day, when such stockholders shall elect by plurality vote by ballot a Board of Directors for the ensuing year, and transact such other business as may properly be brought before the meeting.

6. The holders of a majority of the stock issued and outstanding, and entitled to vote thereat, present in person or represented by proxy, shall be requisite
403 and shall constitute a quorum for the transaction of all business at all meetings of the stockholders; but if a majority of such stockholders be not present, the stockholders present in person or by proxy shall have power to adjourn the meeting from time to time without notice other than announcement at the meeting until the requisite amount of voting stock shall be present, and at such adjourned meeting at which a requisite amount of voting stock shall be represented any business may be lawfully transacted which might have been transacted at the meeting as originally notified.

7. At any meeting of the stockholders each stockholder having the right to vote shall be entitled to vote in person, or by proxy, appointed by an instrument in writing signed and subscribed by such stockholder and bearing a date not more than one year prior to said meeting. Each stockholder shall have one vote for each share of stock having voting power and registered in his name on the books of the corporation, except the books of the corporation shall be closed ten days prior to the date of said annual meeting of the stockholders, and no certificate of stock transferred within said ten days shall be entitled to vote for the election of Directors. Written notice of the annual meeting shall be mailed to each stockholder entitled to vote thereat, at his last postoffice address at least ten days prior to the date of said meeting, such notice to be by mail by the secretary or assistant secretary.

404 8. A complete list of the stockholders entitled to vote at the ensuing election, arranged in alphabetical order, with the residence of each and the number of shares held by each, shall be prepared by the secretary and filed in the office of said corporation prior to the date of said meeting, and shall be open to inspection by any stockholder.

9. Special meetings of the stockholders for any purpose or purposes may be called by the president or by the president and secretary, or other officer, at the request of a majority of the Board of Directors, or at the request in writing of a majority of the stockholders. Such requests shall state the purpose or purposes of such special meeting.

10. Business transacted at all special meetings shall be confined to the objects stated in the call.

11. Written notice of a special meeting of the stockholders stating the time, place and object thereof shall be mailed postage prepaid to each stockholder at least five days before the date of said meeting.

Directors.

12. Property and business of the corporation shall be managed by a Board of Directors, three in number, who shall each be a stockholder, and who shall be elected at the annual meeting of the stockholders, except the First Board of Directors, who are J. T. Harrell, E. E. Scannell and J. Will Gray; and each Director shall serve until his successor is elected and shall qualify.

405 13. The Directors shall hold their meetings at the principal office of said corporation and there keep the books and records of said corporation.

14. If the office of any Director, or Directors, becomes vacant the remaining Directors shall choose a successor or successors, who shall hold office until the next regular annual meeting of the stockholders, and until a successor or successors have been duly elected.

15. The Directors shall receive no compensation for their services as such.

Meetings of the Board.

16. The Board of Directors shall meet at such time and place as may be selected by them, and a majority of the Board shall constitute a quorum; but said Directors may provide for regular or special meetings, and no notice of a regular meeting shall be required after the same has been fixed by the Board of Directors.

17. Special meetings may be had upon the call of the president or any two directors, and two days notice shall be given to the Directors of such special meeting, either personally, by telephone or mail.

18. At all meetings of the Board of Directors a majority of the Directors shall be necessary to constitute a quorum, and the act of a majority shall be sufficient for the transaction of any business.

406 Officers.

19. The officers of the corporation shall be chosen by the Directors and shall be a president, vice-president, secretary and treasurer, although the secretary and treasurer may be the same person. There may also be an assistant secretary and assistant treasurer. The officers need not be stockholders, except the president and vice-president.

20. The Board of Directors shall at its first meeting choose such officers. The Board of Directors may appoint such other officers or agents as may be necessary or proper for the purpose of conducting the business of the corporation, and the salaries of all officers and agents shall be fixed by the Board of Directors.

21. The officers of the corporation shall hold office until their successors are chosen and qualify in their

stead, and any officer elected or appointed by the Board of Directors may be removed at any time by a majority vote of the Board of Directors.

President.

22. The president shall be the chief executive officer of the corporation. He shall preside at all meetings of the stockholders and Directors and shall have general and active management of the business of the corporation. He shall execute bonds, mortgages, deeds and conveyances requiring a seal, under the seal of the corporation, and shall have general powers and duties of
407 supervision and management usually vested in such officer.

Vice-President.

23. The vice-president shall, in the absence or disability of the president, perform his duties and exercise all of the powers of the president.

Secretary.

24. The secretary shall attend all the sessions of the Board of Directors, all meetings of the stockholders, record all votes and minutes of all proceedings in a proper book to be kept for that purpose. He shall give, or cause to be given, notice of all meetings to the stockholders and to the Directors, and shall perform such other duties as may be prescribed by the Board of Directors, or the president, under whose supervision he shall act. He shall keep the seal of the corporation and affix when authorized by the Board of Directors, and when so affixed it shall be attested by his signature, or the signature of the treasurer. An assistant secretary may be selected who shall act for the secretary in all matters in his absence, or by reason of the disability of said secretary.

Treasurer.

25. The treasurer shall have the custody of the corporate funds and securities, and shall keep a full and accurate record of the receipts and disbursements in books belonging to the corporation. He shall deposit all monies and other valuable effects in the name and to the credit of the corporation in such depository as
408 may be selected by the corporation. He shall disburse the funds of the corporation as may be ordered by the Board, and shall render to the president and directors, at regular meetings of the Board of Directors, or whenever they require it, an account of all his transactions. He may be required to give a bond for the faithful performance of his services.

Certificates of Stock.

26. Certificates of stock of the corporation shall be numbered and entered in the books of the corporation as they are issued, and shall show the holder's name, the number of shares, the par value, and shall be signed by the president or vice-president, together with the treasurer or secretary.

Transfers of Stock.

27. Transfers of stock shall be made on the books of the corporation only by the person named in the certificate, or by attorney lawfully appointed in writing, and upon surrender of the certificate therefor the corporation shall be entitled to treat the holder of any share or shares of stock as the legal holder thereof, and accordingly shall not be bound to organize any equitable claim, or other claim to, or interest in, such share on the part of any other person.

28. Any person claiming a certificate of stock to be lost or destroyed shall be required to make an affidavit

of such fact, and before a duplicate can be issued shall be required to give an indemnity bond in such form and with such sureties as may be required by the Board of
409 Directors, in an amount to be fixed by the Board of Directors.

Checks.

29. Checks or demands for money and notes of the corporation shall be signed by such officer or officers, or agents, as may be designated from time to time by the Board of Directors.

Fiscal Year.

30. The fiscal year shall be the calendar year.

Dividends.

31. Dividends on the capital stock of the corporation may be declared by the Board of Directors at any regular or special meeting of said Board, and may be paid in cash, in property, or in shares of the capital stock.

32. The Board of Directors shall present at each annual meeting, and when called for by the vote of the stockholders at any special meeting of the stockholders, a statement of the business and condition of the corporation.

Notices.

33. Whenever, under any of the provisions of these by-laws, notice is required to be given to any director, officer, or stockholder, it shall not be construed to mean personal notice, but such notice may be given in writing by mail, by depositing the same in the postoffice or letter

box in a post-paid sealed envelope, addressed to such stockholder, officer or director at such address as appears on the books of the corporation, or in default of other address, at his last known postoffice address, and when such notice is properly mailed it shall be deemed given at the time when mailed.

34. Any stockholder, director or officer may waive any notice required to be given under these by-laws.

Amendments.

35. These by-laws may be altered or amended or repealed by the affirmative vote of a majority of the stock issued and outstanding, and entitled to vote, at any regular meeting of the stockholders, or at any special meeting called for such purpose, or by the affirmative vote of the majority of the Board of Directors at any regular meeting, or any special meeting, notice of which special meeting shall contain the proposed alteration, amendment, etc.

Witness our hands at Wichita Falls, Texas, this 24th day of January A. D., 1930.

(Signed) J. T. HARRELL,
E. E. SCANNELL,
J. WILL GRAY.

Mr. Humphrey:

Next offer in evidence the charter of the Texas Investment Company, signed on the 28th of August, 1929, by J. Will Gray, J. T. Harrell, George W. Peckham, it appears at page 776 of the transcript of the evidence.

411 (Said instrument marked "Plaintiff's Exhibit 17" and reading as follows:)

PLAINTIFF'S EXHIBIT 17.

Charter of a Domestic Corporation.

The State of Texas,
County of Wichita.

Know All Men By These Presents: That we, George W. Peckham, J. T. Harrell and J. Will Gray, all citizens of the State of Texas, under the provisions of the Revised Statutes of the State of Texas, do hereby form and incorporate ourselves into a voluntary association, for the purpose of the erection or repair of any building or improvement, and the accumulation and loaning of money for said purposes, and for the purchase, sale and subdivision of real property in towns, cities and villages, and their suburbs not extending more than two miles beyond their limits and for the accumulation and loaning of money for that purpose, and to that end we hereby adopt and subscribe the following:

Charter.

Article I.

The name of this corporation is Texas Investment Company of Wichita Falls and by which name it shall contract and be contracted with, sue and be sued, and transact all of its business.

412 Article II.

The purpose of this corporation is the erection or repair of any building or improvement, and the accumulation and loaning of money for said purposes, and for the purchase, sale and subdivision of real property in towns,

cities and villages, and their suburbs not extending more than two miles beyond their limits and for the accumulation and loaning of money for that purpose.

Article III.

The principal office and place of business of this corporation shall be Wichita Falls in Wichita County, Texas, and the business of the corporation may be transacted at such other place or places within said state as may be designated in its By-Laws.

Article IV.

The said corporation shall exist for the term of Ten (10) Years.

Article V.

The number of directors of said corporation shall be three, unless increased by a majority vote of the stockholders, and the following named stockholders are hereby declared to be the directors for the first year, to-wit:

Geo. W. Peckham, 3200 Peckham Street, Wichita Falls, Texas.

J. T. Harrell, 1615 Buchanan Street, Wichita Falls, Texas.

413 J. Will Gray, 1215 Taylor Street, Wichita Falls, Texas.

Article VI.

The capital stock of this corporation shall be Twenty-Five Thousand ($25,000.00) Dollars, to be divided into two hundred fifty (250) shares of One Hundred ($100.00) Dollars each, all of which capital stock has been subscribed and paid in as per affidavit attached hereto.

In Testimony Whereof we hereunto sign our names this 28th day of August, A. D., 1921.

J. WILL GRAY,
J. T. HARRELL.
GEO. W. PECKHAM.

The State of Texas,
County of Wichita.

Before me, the undersigned authority, on this day personally appeared Geo. W. Peckham, J. T. Harrell and J. Will Gray, known to me to be the persons whose names are subscribed to the foregoing instrument, and severally acknowledged to me that they executed the same for the purposes and consideration therein expressed.

In testimony whereof, I hereunto subscribe my name and affix the seal of my office, this 28th day of August, A. D. 1929.

A. B. DUNCAN,
Notary Public in and for Wichita County, Texas.

414 No. S S 114. Charter of Texas Investment Company of Wichita Falls, Wichita Falls, Texas.

Capital Stock $25,000.00. Filing fee $70.00. Franchise 5-1-30 $8.36. Remarks: 10 Years. 250 Shares, $100.00 each.

All Paid.

Filed in the Office of the Secretary of State, this 30th day of Aug., 1929.

JANE Y. McCALLUM,
Secretary of State.

#19720.

The State of Texas,
Department of State.

I, Jane Y. McCallum, Secretary of State, of the State of Texas, do hereby certify that the foregoing is a true and correct copy of the charter of the Texas Investment Company, of Wichita Falls, with the indorsement
415 thereon, as now appears of record in this department.

In testimony whereof, I have hereunto signed my name officially and caused to be impressed hereon the Seal of State at my office in the City of Austin, this 3 day of Sept. A. D., 1929.

JANE Y. McCALLUM,
Secretary of State.

(Seal, the State of Texas.)

Mr. Humphrey:

Next offer in evidence the amendment of the Texas Investment Company, to the charter, being PLAINTIFF'S EXHIBIT No. 18.

Said exhibit being dated January 24, 1930, signed by J. T. Harrell, J. Will Gray, E. E. Scannell, wherein the corporate stock was increased from $25,000.00 to $75,000.00, and the number of shares increased from 250 to 750 of the par value of $100.00 each.

Acknowledgment of J. T. Harrell, J. Will Gray and E. E. Scannell, being taken on January 24, 1930, before A. B. Duncan, Notary Public in and for Wichita County, Texas.

416 Mr. Humphrey:

Next offer in evidence the minutes of the first meeting of the incorporators, held at the office of the company on the 24th day of January, 1930, at 3:00 o'clock P. M., together with the notice and waiver. It appears to

be signed by J. T. Harrell, Chairman, and J. Will Gray, Secretary.

(Instrument marked "Plaintiff's Exhibit 19" and reading as follows:)

417 PLAINTIFF'S EXHIBIT 19.

Texas Investment Company of Wichita Falls.

Minutes of First Meeting of Incorporators.

The first meeting of the incorporators of Texas Investment Company of Wichita Falls, was held on the 24th day of January, 1930, at 3:00 o'clock P. M., at its principal office in the city of Wichita Falls, Texas, pursuant to a written waiver signed by said incorporators, except George W. Peckham, who had, subsequent to the filing of the charter, departed this life, but whose estate was represented by W. H. Peckham, his duly and legally appointed administrator, which waiver of notice is as follows:

Texas Investment Company.

Waiver of Notice.

Meeting of Incorporators.

We, the undersigned, J. T. Harrell, J. Will Gray and W. H. Peckham, acting as administrator of the estate of George W. Peckham, deceased, the incorporators of Texas Investment Company of Wichita Falls, organized under the laws of the State of Texas, do hereby waive notice of the time, place and purpose of the first meeting of the said corporation and do fix the 24th day of January, 1930, at 3:00 o'clock P. M., as the time, and the office
418 of J. T. Harrell in the City National Bank Building as the principal office of said corporation and place of said meeting.

And we hereby waive all the requirements of the statutes of the State of Texas, both as to the notice of this meeting and the publication thereof; and we do consent to the transaction of such business as may come before said meeting.

Dated, 24th day of January, 1930.

(Signed) J. T. HARRELL,
J. WILL GRAY,
W. H. PECKHAM.

The following incorporators being the sole stockholders of said corporation were present in person: J. T. Harrell, J. Will Gray, W. H. Peckham, Administrator of the Estate of George W. Peckham, deceased, being all the incorporators and all the stockholders of said company.

Upon motion, J. T. Harrell was chosen as chairman, and J. Will Gray, as Secretary of said meeting.

The chairman reported that the certificate of incorporation was duly filed in the office of the Secretary of State of the State of Texas, on the 30th day of August, 1929, and the Secretary was instructed to cause a copy of said certificate of incorporation to be inserted in the
419 Minute Book.

The secretary thereupon presented a form of by-laws for the regulation of the affairs of the corporation, which were read, section by section.

Upon motion duly made, seconded and carried it was

Resolved, that the by-laws submitted to and read at this meeting be and the same are hereby adopted as the by-laws of this corporation, that the secretary be and he is hereby instructed to cause the same to be inserted in the Minute Book immediately following the copy of the

certificate of incorporation which certificate of incorporation and by-laws precede the Minutes of this first meeting.

It was thereupon stated that the shares of stock subscribed and paid for by George W. Peckham was held by him in trust for the Wichita Royalty Company, a trust estate, whose sole trustee was E. E. Scannell.

Thereupon, the following resolution was offered, seconded and unanimously adopted:

Be It Resolved that the capital stock subscribed and paid for by George W. Peckham in this corporation, which stock is 125 shares of the par value of $100.00 each, be issued and delivered to W. H. Peckham, administrator of the Estate of George W. Peckham, deceased, and be transferred thereafter to E. E. Scannell, sole trustee of Wichita Royalty Company.

420 It appearing that all the stock in said corporation which was subscribed and paid for is represented at this meeting, and since the date of the incorporation, George W. Peckham has departed this life and that he was named and designated in Articles of Incorporation as one of the Directors of said corporation, the Chairman thereupon announced that it was necessary to elect another Director, and upon motion being made by J. Will Gray, and seconded by W. H. Peckham, Administrator of the Estate of George W. Peckham, deceased, E. E. Scannell was unanimously elected as Director of said corporation instead of George W. Peckham, deceased.

It appearing that the Stockholders had unanimously agreed that the capital stock of said corporation should be increased from $25,000.00 to $75,000.00, the question of such increase was placed before the meeting, and upon motion of J. Will Gray, seconded by E. E. Scannell, it was unanimously

Resolved, that the capital stock of this corporation be increased from 250 shares of the par value of $100.00 each to 750 shares of the par value of $100.00 each, and that the present Stockholders be given the privilege of subscribing for said increased stock ratably to the amount of the original stock they now hold, and that upon the payment in full of said increased capital stock the Directors are authorized and directed to certify the same to the Secretary of the State of Texas, and file an amendment to the charter of this corporation as required by
421 the laws of the State of Texas.

Thereupon, no further business coming before said meeting, it was, upon motion duly made and seconded, adjourned.

(Signed) J. T. HARRELL,
Chairman,
J. WILL GRAY,
Secretary.

422 Mr. Rogers:

The Wichita Royalty Company and E. E. Scannell, its trustee, object to the introduction of the charter of the Texas Investment Company, a corporation, and to all amendments thereof, and to all by-laws, minutes, resolutions and waivers or other transactions had, by such corporation, or by the trustee of the Wichita Royalty Company in its relation thereto, in the issuance of stock thereof, because it affirmatively appears that the authority of the trustee was limited solely and only to the purchase and sale of oil and gas properties, and the charter and the amendments of the corporation show the purpose of the corporation to be foreign to the oil business; and a declaration of trust constituting, as it does, the charter of the powers of the trustee, excluded the power to subscribe to stock, in or participate as a shareholder or director in any corporation of any kind, and certainly forbade his dealing with such a corporation in such capacities in the corporation itself. It was deliver-

ing a charter for the purpose of dealing in a subject matter foreign to the powers of the trust, and the purposes for which it was organized, the trustees not being authorized to change the purposes of the trust, in the purposes now sought to be shown, as binding upon the trust estate, being foreign to any authority ever delegated to the trustee, and it not being shown that the stockholders at any time knew or ratified, adopted, or confirmed, or otherwise acquiesced in the trustee's dealing with such corporations.

423 This objection is made to apply to those instruments which have heretofore been offered, and all instruments that may hereafter be offered, in connection therewith, or relating thereto.

(Which objection was by the Court overruled, to which the defendant then and there excepted.)

Mr. Humphrey:

Next offer in evidence a Waiver of Notice of meeting of the Directors, of the Texas Investment Company, signed on the 24th day of January, 1930, same being signed by J. T. Harrell, J. Will Gray, and E. E. Scannell, together with a copy of the minutes of the board of directors held on the 24th day of January, 1930, pursuant to said meeting.

PLAINTIFF'S EXHIBIT 20.

Texas Investment Company of Wichita Falls.

Waiver of Notice of Meeting of Directors.

We, the undersigned, being the present Board of Directors of Texas Investment Company of Wichita
424 Falls, hereby waive notice of the time, place and purpose of the first meeting of the Directors of

said corporation, to be held at the office of said corporation in the city of Wichita Falls, Texas, on the 24th day of January, A. D., 1930, immediately following the first meeting of the stockholders of said corporation. The purpose of said meeting being the election of officers of said corporation, and the transaction of such other business as may properly come before said meeting.

Witness our hands this 24th day of January, 1930.

(Signed) J. T. HARRELL,
J. WILL GRAY,
E. E. SCANNELL.

Texas Investment Company of Wichita Falls.

Minutes of the Meeting of the Board of Directors.

Held at the office of said corporation, in the city of Wichita Falls, Texas, on the 24th day of January, A. D., 1930, immediately following the adjournment of the first meeting of the stockholders of said corporation, said meeting being held pursuant to written waiver signed by said directors.

Mr. J. T. Harrell acted as Chairman of said meeting and Mr. J. Will Gray acted as Secretary.

The Chairman then stated that the election of officers of said corporation was in order, and the following nominations were made:

425

E. E. Scannell, President.
J. T. Harrell, Vice-President.
J. Will Gray, Treasurer.
A. B. Duncan, Secretary.

Upon a vote being taken it was found that all of the Directors voted for the officers above named; the term of their office to be for one year from this date and until their successors are elected and qualified.

Upon motion, duly made and carried, the salary of the Secretary was fixed at the sum of $25.00 per month, payable at the end of each month out of the funds of said corporation, and the President or Vice-President and Treasurer were authorized to draw on the funds of said corporation for said salary.

The proper officers were further authorized and directed to draw on the funds of the corporation to pay the expenses incident to the incorporation.

No further business coming before said meeting, it was, upon motion duly made and seconded, adjourned.

(Signed) J. T. HARRELL,
Chairman,
J. WILL GRAY,
Secretary.

426 Mr. Humphrey:

Next offer in evidence amendment increasing the capital stock of the Texas Investment Company, dated 24th day of January, 1930, signed by J. T. Harrell and J. Will Gray, and E. E. Scannell, acknowledged before A. B. Duncan, together with a certified copy of the Secretory of State accompanying the same.

(Marked "PLAINTIFF'S EXHIBIT 21")

Acknowledged before A. B. Duncan, Notary Public in and for Wichita County, Texas, on January 24, 1930. Increasing the capital stock from $25,000.00 to $75.000.00 and increasing the number of shares from 250 to 750, of the par value of $100.00 each. Filing fee $90.00.

Bearing the certificate of the Secretary of State, of the State of Texas, dated February 7, 1930.

Mr. Humphrey:

We next offer in evidence waiver of notice of a special meeting of the stockholders of the Texas Investment Company, being PLAINTIFF'S EXHIBIT 22.

Dated March 7, 1930, signed by J. T. Harrell, J. Will Gray and E. E. Scannell. The purpose of said meeting being to determine the advisability of decreasing the capital stock of said corporation from 750 shares of par value of $100.00 each to six hundred and fifty shares of the same par value.

427 Texas Investment Company of Wichita Falls.

Special Meeting of the Stockholders.

Special meeting of the stockholders of Texas Investment Company of Wichita Falls, held at the office of said corporation, on the 17th day of March, A. D., 1930, pursuant to waiver of notice thereof, executed by all of the stockholders.

Mr. E. E. Scannell acted as Chairman of said meeting and Mr. A. B. Duncan acted as Secretary.

The Chairman stated to the meeting that it would be advisable, and to the best interest of the corporation, to reduce the capital stock of the corporation, from $75,000.00, being 750 shares of the par value of $100.00 each, to $65,000.00 of 650 shares of the par value of $100.00 each.

Thereupon, on motion of Mr. J. Will Gray, seconded by Mr. J. T. Harrell, it was unanimously

Resolved that the capital stock of Texas Investment Company of Wichita Falls, be reduced from $75,000.00, being 750 shares of the par value of $100.00 each to $65,000.00, of 650 shares of the par value of $100.00 each, and that the shares of stock held by each stockholder be reduced rateably.

Thereupon.

Be it Further Resolved that the Directors of this corporation be directed and authorized to certify to the Secretary of State, of the State of Texas, this reduction of capital stock.

428 Upon motion of Mr. J. T. Harrell, seconded by Mr. J. Will Gray, it was

Resolved that the Directors of this corporation be, and they hereby are directed to purchase all of the assets of the Marlborough Addition to the City of Wichita Falls, Texas, a joint-venture, for a cash consideration of $65,000.00, and the assumption by this corporation of the existing indebtedness against said addition, said purchase to be as of January 1st, 1930.

Said resolution was unanimously adopted.

The Secretary of this corporation was directed to attach to the minutes of this meeting a condensed balance sheet, showing the assets to be purchased from said Marlborough Addition, and the liabilities to be assumed.

No further business coming before said meeting, upon motion, duly made and seconded, the same adjourned.

(Signed) E. E. SCANNELL,
Chairman,

A. B. DUNCAN,
Secretary.

Mr. Humphrey:

Next offer in evidence the balance sheet of the Marlborough Addition, as of January 1, 1930.

(Marked Plaintiff's Exhibit No. 23" and reading as follows:)

429 PLAINTIFF'S EXHIBIT 23.

Assets and Liabilities of Marlborough Addition as of January 1, 1930.

Assets

City National Bank	$ 434.02	
E. C. De Montel	394.24	
Cost of Sale Contracts	18,722.37	
Deposit, Electric	771.62	
Marlborough Addition	108,751.88	
Municipal Gas Co.	2,000.00	
Notes and Contracts	25,116.20	
Total		$156,190.33

Liabilities

Notes payable, City Natl. Bank	$ 43,500.00	
Notes payable, Sec. National Bank	2,500.00	
Notes payable, R. D. Pool	5,000.00	
Notes payable, Guar. St. B.&L.	4,750.00	
Notes payable, J. A. Kemp	5,000.00	
Notes payable, C. D. Shamburger	5,293.95	
Sales Contracts	25,132.38	
Sconnell-Totzke	14.00	
		91,190.33
Net Worth		$ 65,000.00

Mr. Humphrey:

We next offer in evidence copy of the amendment decreasing the capital stock of the company, executed on

the 17th day of March, 1930, by J. T. Harrell, J. Will Gray and E. E. Scannell, certificate to which is at-
430 tached, Secretary of State.

Instrument marked "PLAINTIFF'S EXHIBIT 24."

Said exhibit being executed on the 17th day of March, 1930, by J. T. Harrell, J. Will Gray and E. E. Scannell. The certificate of the Secretary of State being attached. Decreasing the capital stock from $75,000.00 to $65,000.00 and decreasing the number of shares from 760 to 650 of par value of one hundred dollars each.

Mr. Humphrey:

Next offer in evidence Waiver of Notice of the meeting of the Directors of the Texas Investment Company dated 17th day of March, 1930, and the minutes of said meeting signed by J. Will Gray, E. E. Scannell, and J. T. Harrell.

(Instrument marked "PLAINTIFF'S EXHIBIT 25," and reading as follows:)

Texas Investment Company of Wichita Falls.

Waiver of Notice of Meeting of Directors.

We, the undersigned, being the present Board of Directors of Texas Investment Company of Wichita
431 Falls, hereby waive notice of the time, place and purpose of a special meeting of the Directors of said corporation, to be held at the office of said corporation in the City of Wichita Falls, Texas, on the 17th day of March, A. D. 1930, immediately following a special meeting of the stockholders of said corporation, the primary purpose of said meeting being to comply with the

action of the stockholders special meeting and for the purpose of transacting such other business as may properly come before said meeting.

Witness our hands this 11th day of March, A. D., 1930.

(Signed) J. WILL GRAY,
E. E. SCANNELL,
J. T. HARRELL.

Texas Investment Company of Wichita Falls.

Special Meeting of the Board of Directors.

Special meeting of the Board of Directors of Texas Investment Company held at the office of the corporation, on the 17th day of March, A. D, 1930, pursuant to waiver of notice thereof, executed by all of the Directors. Said meeting was held immediately following a special meeting of the stockholders and all of the directors were present, namely J. T. Harrell, E. E. Scannell and J. Will Gray.

Upon motion duly made and seconded it was unanimously—

432 Resolved that we, the Board of Directors of said corporation, in complaince with the action of the stockholders, do hereby decrease the capital stock from $75,000.00 to $65,000.00, decreasing the number of shares from 750 to 650, of the par value of $100.00 each, and that the shares of stock held by each stockholder be reduced rateably, and the Secretary is hereby instructed to cancel the stock certificates now outstanding and issue new certificates to each stockholder.

Upon motion duly made and seconded it was unanimously—

Resolved that the President, E. E. Scannell and the Secretary, A. B. Duncan, be and they are hereby authorized and empowered to execute and deliver deeds to real estate belonging to this corporation, located in Marlborough Addition to the City of Wichita Falls, Texas, and to attach the seal of the corporation thereto.

Upon motion duly made and seconded it was unanimously—

Resolved that the Secretary of this company be and he is hereby authorized, instructed and directed to open and keep a bank account with The City National Bank of Wichita Falls, in the name of and for the use of this Company, and to deposit in said bank to the credit of this Company from time to time, any and all moneys and checks, and until otherwise ordered said bank to be and hereby is authorized to make payments from the funds of the Company on deposit with it upon and according to the check of this company signed by its Secretary, A. B. Duncan and countersigned by its President, E. E. Scannell or its Vice-President, J. T. Harrell.

433 The Secretary of this corporation was directed to file with the Secretary of State of the State of Texas the required information and instruments and to take such other steps as may be necessary for the reduction of the capital stock of this corporation in compliance with the resolution adopted.

No further business coming before said meeting, upon motion duly made and seconded, the same adjourned.

(Signed) J. WILL GRAY,
E. E. SCANNELL,
J. T. HARRELL,
(Signed) A. B. DUNCAN,
Secretary.

Mr. Humphrey:
Then I want to offer in evidence the original cross action of the Wichita Royalty Company, which I will have to supply later.

434 It Is Agreed that the original cross action of the Wichita Royalty Company against the City National Bank of Wichita Falls, Texas was filed on Feb. 14, 1931 in the District Court of Wichita County, Texas.

Mr. Humphrey:
I offer in evidence the date of the judgment in the trial Court. Can we agree on it, as being on February 25, 1932?

Mr. Rogers:
Yes.

Mr. Humphrey:
It is agreed, Febuary 25, 1932.

435 Mr. Humphrey:
I offer in evidence the date of the judgment of the Court of Civil Appeals, affirming this case, which is February 24, 1934, shown in the 74th Southwestern Second, 661.

Mr. Humphrey:
Also the date of the judgment of the Supreme Court reversing the case December 11, 1935, and reported in the Eighty-Ninth, Southwestern, Second, 394.

Mr. Humphrey:
And the date of the rehearing modifying the original opinion on April 8, 1936, reported in 93 S. W. (2) 143.

Mr. Humphrey:
Next offer in evidence deed of trust executed by the Wichita Royalty Company, certified copy dated the 6th

day of December 1933, in favor of Charles L. Black, and Guy Rogers, by E. E. Scannell, trustee, certified by Charlie Thut, county clerk of Gray County. Recorded in Gray, Archer, Young and Wheeler Counties.

(Instrument marked "Plaintiff's Exhibit 27" and reading as follows:)

436 PLAINTIFF'S EXHIBIT 27.

The State of Texas,
County of Wichita.

Know All Men By These Presents: That Wichita Royalty Company, acting herein by its sole Trustee hereunto duly authorized, has and by these presents does Bargain, Sell, Transfer and Assign unto Charles L. Black of Austin, Travis County, Texas, all oil and gas produced or to be produced from any and all of its properties wherever situate, as well as all moneys due or to become due Wichita Royalty Company by any and all persons, firms and corporations for oil or gas purchased or to be purchased from Wichita Royalty Company or run to its credit, hereby granting to the said Charles L. Black full power and authority to have and receive any and all minerals heretofore or hereafter produced from or accruing to any estate whatsoever owned and claimed by Wichita Royalty Company and to receive all moneys from the sale thereof, as well as to receive all moneys payable to Wichita Royalty Company as bonus, rental, royalty, or money in lieu of royalty, hereby vesting in the said Charles L. Black full title and right of possession to all of same.

And Wichita Royalty Company, for value to it in hand paid by Ray Bland of Wichita County, Texas, and in further consideration of the debts and trusts hereinafter mentioned has Granted, Sold, Conveyed, Transferred, Assigned and set over and by these presents does Grant,

437 Sell, Convey, Transfer, Assign and set over unto the said Ray Bland, as trustee, and to his successor or substitute in this trust and to his and their assigns forever, all and singular all of the property of said Wichita Royalty Company, a trust estate created by Articles of Agreement filed in the office of the County Clerk of Wichita County, Texas whether such property be personal or real and whatsoever description and wheresoever situated, including land, interests in land, leases, royalties, mineral estates, leasehold interests, oil and gas rights, minerals, moneys due for the sale of minerals, accounts receivable, choses in action, bonuses, rentals and moneys due or to become due in lieu of royalty, together with the increase thereof and rights and privileges now existing or later to exist by reason of present ownership or based upon or growing out of such present ownership and generally it is intended to vest in the said trustee full and absolute title to all of the property of Wichita Royalty Company.

To Have and to Hold the above, described properties, together with all and singular the rights and appurtenances thereto in anywise belonging unto the said Ray Bland, trustee, and to his successor or substitute in this trust and his and their assigns forever.

This sale and conveyance is, however, for the following purposes and upon the following conditions and with the following rights and powers, namely:

438 If the said Wichita Royalty Company shall well and truly pay to Charles L. Black the sum of Five thousand ($5,000) Dollars, or so much thereof as may be equal to the reasonable value of professional services performed and to be performed by Charles L. Black for and on behalf of Wichita Royalty Company pending final judgment in cause No. S4549-B on the docket of the 78th District Court of Wichita County, Texas, now on appeal and being cause No. 12784 upon the docket of the Court

of Civil Appeals for the second Supreme Judicial District of Texas at Ft. Worth, wherein Wichita Royalty Company, et al, are appellants and City National Bank of Wichita Falls, Texas, et al, are appellees, as well as the further sum equal to the reasonable and necessary cost and expense incident to said litigation including costs of Court, costs of appeal, costs of briefing, costs of printing briefs and/or records, costs of transcript, costs of record, costs of attorneys in furtherance of said cause and/or appeal outside of Austin, Texas, as well as any and every cost and/or expense incurred or to be incurred in connection with such services and shall pay said items as of their respective maturities, namely, upon the rendition of said services and the incurring of said costs and expense, then this obligation to be null and void and to be released by the said Charles L. Black.

It is the agreement between Wichita Royalty Company and Charles L Black that he will faithfully and to the best of his ability represent Wichita Royalty Company in the above litigation pending final judgment
439 and that for such services so rendered and to be rendered Wichita Royalty Company will pay the reasonable value of such services, as well as all costs and expense incurred as above shown. It is the further agreement that $1250.00 of the above amount shall be due and payable by Wichita Royalty Company to said Charles L. Black ninety days from the date hereof and that such further sums shall be due and payable to him from time to time in amounts equal to the value of services performed and at times when such services are performed and/or costs and/or expense incurred, but in no event shall Wichita Royalty Company's obligation exceed the total amount above set out and for the security of which this instrument is executed.

Should Wichita Royalty Company fail to pay all or any accrued portion of the above described indebtedness at maturity, thereupon and in such event the said Trustee

is hereby authorized and empowered and it shall be his duty, at the request of the said Charles L. Black, to sell all the above described property, or such portion thereof reasonably sufficient to bring at foreclosure sale an amount of money equal to the amounts then due, said sale to be to the highest bidder for cash at the Courthouse door of the county in which the property to be sold, or any part thereof, is situated, the same to be made at public outcry between the hours of ten o'clock A. M. and four o'clock P. M. on the first Tuesday in any month after having given notice of such sale by posting written or printed notice at three public places in such county and in each of the counties where properties to be sold are situated, one of which notices shall be posted at the Courthouse door of said county and/or counties, and all of which notices shall have been posted for at least twenty-one days successively next before the sale.

Upon any such sale the Trustee is authorized and empowered, in the name of Wichita Royalty Company, to make to the purchaser or purchasers hereunder good and sufficient instrument of conveyance conveying the property so sold to the purchasers in fee simple with general warranty of title, and to receive the proceeds of sale and to apply the same as follows: (1) to the payment of all necessary cost and expense incident to the execution of said trust, including a fee to the trustee of ten percent to be estimated upon the amount realized at said sale: (2) to the payment of the matured portion of the debt hereinabove described; and (3) the remainder, if any, shall be paid to Wichita Royalty Company or to its successors and/or assigns.

Since Wichita Royalty Company's debt to Charles L. Black and costs and expenses incurred and accrued hereunder shall mature and become payable from time to time, it is specially provided that upon the maturity of a portion of the debt hereinabove described and at the re-

quest of the owner thereof, the trustee is directed and is empowered to sell a portion of the property covered hereby in the form. time and manner above provided, but which partial sale shall not exhaust the power again to sell and it is specially provided that said trustee is authorized, empowered and directed to make successive sales upon the respective maturities of portions of said obligation from time to time as same mature, said respective sales to be in the form, time and manner above provided.

441

This assignment and conveyance is in further trust to secure Guy Rogers in the payment of all costs and expense incident to or growing out of the above litigation and is additional security to that given for the same debt and upon the same contract between Wichita Royalty Company and Guy Rogers dated February 25, 1932, and filed for record in the office of the County Clerk of Okmulgee County, Oklahoma, at nine o'clock A. M. March 4, 1932, and there recorded in Record No. 443 pages 90 60 95 inc., to which reference is here made, but it is expressly provided that the lien hereby created in favor of and the rights hereby vested in Charles L. Black shall be and the same are hereby made in all things prior and superior to the rights of Guy Rogers.

Should the said Charles L. Black and/or Guy Rogers die or become incapacitated and/or unwilling to render professional services or incur costs and/or expense incident to said litigation pending the final determination thereof, it is specially provided that the security hereby created shall subsist and be valid in favor of whomsoever Wichita Royalty Company may select to render such further services and for those persons, firms, or corporations incurring costs and/or expense in connection therewith.

442

In case of the death, resignation or inability, or failure or refusal of Ray Bland within five days after request to

make sale and perform said trust, then the beneficiaries hereunder, or either of them, may in writing appoint a substitute trustee who shall succeed to all the estate, rights, powers and trusts hereinbefore granted to and vested in the trustee.

In Witness Whereof, these presents have been duly executed this the 6th day of December, A. D. 1933.

WICHITA ROYALTY COMPANY,
By E. E. SCANNELL,
Trustee.

The State of Texas,
County of Wichita.

Before Me, the undersigned authority, a Notary Public, on this day personally appeared E. E. Scannell, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed and in the capacity therein stated.

Given under my hand and seal of office, This the 8th day of December, A. D. 1933.

GRACE JARNAGAN,
(Seal) Notary Public, Wichita County, Texas.

443 Filed for Record April 4th, 1934 at 11:30 A. M.

Recorded April 9th, 1934 at 11:05 A. M.

CHARLIE THUT,
County Clerk.
By KATHERINE HOWELL,
Deputy.

Clerk's Certificate.

The State of Texas,
County of Gray.

I, Charlie Thut, County Clerk in and for Gray County, Texas, do hereby certify that the above and foregoing is a true and correct copy of an instrument executed by Wichita Royalty Company in favor of Charles L. Black, as same appears of record in Vol. 24, page 349 of the Deed of Trust Records of Gray County, Texas.

Given Under My Hand And Seal Of Office This the 11th day of October, A. D. 1934.

CHARLIE THUT,
County Clerk in and for Gray County, Texas.
By OLA GREGORY,
Deputy.

Mr. Humphrey:

We offer in evidence trustee's deed, Plaintiff's Exhibit 28:

Dated August 7, 1934, from Ray Bland Trustee.

Consideration $250.00, paid by Guy Rogers, as trustee, under the will of L. B. Rogers, deceased, as follows:

444 (Instrument marked "Plaintiff's Exhibit 28" and reading as follows:)

PLAINTIFF'S EXHIBIT 28.

The State of Texas,
County of Wichita.

Know All Men By These Presents: That, Whereas, On the 8th day of December, 1933, Wichita Royalty Company, acting through its Trustee hereunder duly auth-

orized, executed and delivered to Ray Bland all of its property in trust to secure Charles L. Black in the payment of certain indebtedness set out in such deed of trust which is of record in Book 25, at page 75 of the Deed of Trust Records of Young County, Texas; in Vol. 20, page 107 of the Deed of Trust Records of Archer County, Texas; in Vol. 18, page 461 of the Deed of Trust Records of Wheeler County, Texas; and in Vol. 24, page 349 of the Deed of Trust Records of Gray County, Texas, which deed of trust provided that upon the maturity of a portion of the debt therein described, the Trustee therein was authorized to sell all or any portion of the property thereby covered without exhausting the power of future sales; and

Whereas, Default has been made in the payment of a portion of said debt which was past due and unpaid, and the said Charles L. Black, the holder of said indebtedness, has since such default requested the said trustee to sell a portion of the property covered by such deed of trust, such sale to be held without prejudice to the right and power thereafter to offer for sale and to sell
445 such other and further properties of said mortgagor necessary to satisfy the mortgagor's indebtedness to his beneficiaries therein for present or future indebtedness, such portion of the property covered by such deed of trust being described as follows, to-wit:

All and singular the property of the said Wichita Royalty Company situated in the Counties of Archer, Young, Gray and Wheeler, Texas, whether such property be personal or real and whatsoever its description, including the land, interest in land, leases, royalties, minerals estates, leasehold interests, oil and gas rights, minerals, monies due from the sale of minerals, accounts receivable, choses in action, bonuses, rentals and monies due or to become due in lieu of royalty; and

Whereas, Pursuant to such request, and to the provisions of said deed of trust, I proceeded to sell said prop-

erty at public auction at the Courthouse door of Archer County, Texas, between the hours of ten o'clock A. M. and four o'clock P. M. on Tuesday the 7th day of August, A. D. 1934, after having given public notice of the time, place and terms of such sale, as prescribed by the terms of said deed of trust and after first, posting written notice thereof for three consecutive weeks prior to the date of sale in three public places in Archer County, Texas, Gray County, Texas, Wheeler County, Texas, and
446 Young County, Texas, such posting being three in number in each of said counties, one of such notices being posted within the same town; and

Whereas, at such sale said property was by me struck off to Guy Rogers, Trustee under the will of L. B. Rogers, deceased, for the price and sum of $250.00, he being the best and highest bidder for the same and said sum being the best and highest bid therefor;

Therefore, Know All Men By These Presents: That I, Ray Bland, of Wichita County, Texas, Trustee as aforesaid, by virtue of the powers granted to me by said deed of trust and in consideration of the premises and of the sum of $250.00 to me cash in hand paid by the said Guy Rogers as Trustee under the will of L. B. Rogers, deceased, the receipt whereof is hereby acknowledged (which said sum of money I have applied according to the directions of said deed of trust) have, Granted, Sold and Conveyed, and by these presents do Grant, Sell and Convey unto the said Guy Rogers, Trustee under the will of L. B. Rogers, deceased, of the County of Wichita and State of Texas, the property hereinabove particularly described, being all and singular the property of Wichita Royalty Company situated in the Counties of Archer, Young, Gray and Wheeler, Texas.

To Have And To Hold, The said property, together with all and singular the rights and appurtenances thereto in

anywise belonging unto the said Guy Rogers as
447 Trustee under the will of L. B. Rogers, deceased, his heirs and assigns forever. And for and on behalf of the Wichita Royalty Company, the grantor in such deed of trust, and its successors, I do hereby bind the said Wichita Royalty Company and its successors, to warrant and forever defend all and singular said premises; in so far as is authorized by such deed of trust, unto the said Guy Rogers, Trustee under the will of L. B. Rogers, deceased, his heirs and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof.

Witness My Hand, This the 7th day of August, A. D. 1934.

RAY BLAND,
Trustee.

The State of Texas,
County of Wichita.

Before Me, The undersigned authority, on this day personally appeared Ray Bland, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same as Trustee, for the purposes and consideration therein expressed and in the capacity therein set forth.

Given Under My Hand And Seal Of Office, This 9th day of August, A. D. 1934.

FERN KOLB,
(Seal) Notary Public Wichita County, Texas.

448 The State of Texas,
County of Young.

I, Pearl Matthews, Clerk of the County Court in and for said County, do hereby certify that the foregoing instrument, dated the 7th day of August, 1934, with its

Certificate of Authentication, was filed for record in my office, the 21st day of August, 1934 at 8:00 o'clock A. M., and duly recorded the 22nd day of August, 1934, at 11:40 o'clock A. M. in Deed Record of said County, in Vol. 155, on pages 615.

Witness my hand and seal of County Court of said County at Office in Graham, Texas, the day and year last above written.

PEARL MATTHEWS,
(Seal) Clerk County Court, Young County, Texas.
By FRANCES SELL,
Deputy.

Filed for Record August 28th, 1934 at 1:10 P. M.

Recorded August 30th, 1934 at 11:30 A. M.

CHARLIE THUT,
County Clerk.
By KATHERINE HOWELL,
Deputy.

Clerk's Certificate.

The State of Texas,
County of Gray.

I, Charlie Thut, County Clerk in and for Gray County, Texas, do hereby certify that the above and foregoing is a true and correct copy of a "Trustee's Deed" exe-
449 cuted by Ray Bland, Trustee in favor of Guy Rogers, Trustee under the will of L. B. Rogers, deceased, as same appears of record in Vol. 63, page 469 of the Deed Records of Gray County, Texas.

Given Under My Hand And Seal Of Office This the 11th day of October, A. D. 1934.

CHARLIE THUT,
County Clerk in and for Gray County, Texas.
By OLA GREGORY,
(Seal) Deputy.

Mr. Humphrey:

I next offer in evidence a mortgage on certain properties in Oklahoma, a copy of which will be furnished later, executed by the Wichita Royalty Company to Guy Rogers, as mortgagee.

450 H. H. CARSON, a witness for the plaintiff, being first duly sworn, examined in chief by Mr. Humphrey, testified as follows:

My name is H. H. Carson. I am Assistant Cashier of the City National Bank, Wichita Falls, Texas, have been working for that bank thirteen years, with the exception of about ten or eleven months. I have been devoting some time to the inspection and examination of the records of the Wichita Royalty Company, as to their property. I was furnished a record showing what properties they owned in Wheeler and Gray Counties. I will read a list of the properties that were owned in each of those counties, beginning with Archer, which is property No. 80. The north forty acres, block 21, of Anderson Subdivision of his south pasture as per plat of record in the records of Archer County. Property No. 77, in Archer County, being the north one hundred acres of the south one hundred and forty acres of block 1,598, TE & L Co Survey, Abstract 493. The royalty conveyed in Property No. 80, is 1/16 of all the oil royalty and gas royalty and royalty due, to be paid under the terms of that lease. It is dated the 20th day of January, 1925. Here is the south thirty-two acres of block 21, of the south Anderson Ranch land; south sixty acres of the west eighty acres of block 22, Anderson South Pasture Subdivision; north twenty-five acres of the east fifty acres of the west one hundred acres, block 19, Anderson south pasture; east sixty acres

451 of the west one hundred sixty acres of block No. 19, South Anderson pasture subdivision. The interest conveyed, according to the information I have, is one-sixteenth of all the oil and gas royalty. The

instrument is dated July 1, 1925. In property No. 77, Archer County, the interest conveyed is an undivided 1/64 interest in and to all the oil and gas that may be produced; that is the north one hundred acres of the south two hundred and forty acres, block 1,598, TE & L Company Survey, abstract 193. Property No. 79, is one hundred and seventeen acres of land out of the Isaac Holman League and Labor of land, shown by deed dated the 30th day of June, 1925, signed by J. H. Massie, and George Ray, Wichita Royalty Company, conveying to the Wichita Royalty Company 1/16 interest in all the oil and gas and other minerals produced in the tract of one hundred and seventeen acres of land. The next property is No. 82, dated October 9, 1925, signed by B. L. Fain, conveying 1/64 interest in and to the oil and gas and other minerals.

I will make a list of these properties, and introduce it in evidence later.

J. T. HARRELL, being first duly sworn, examined in chief by Mr. Humphrey, testified as follows:

My name is J. T. Harrell. I am president of the City National Bank in Wichita Falls. For a number of years I was president of the City National Bank of Wichita Falls, which is now in liquidation, and which is
452 the plaintiff in this case. I succeeded P. P. Langford as president. I am familiar with the notes that you have offered in evidence. Plaintiff's Exhibit No. 8 has the genuine signature of Mr. Scannell on the note, for the Wichita Royalty Company. I handled that transaction with Mr. Scannell, that was a renewal note of another obligation. At the time the original obligation was made, George W. Peckham was acting for the Wichita Royalty Company. The original note was a renewal of two loans, I don't know exactly the amounts. Referring to the record, the first note came into the bank on January 16, 1926, in the sum of $15,300.00, the second one came in on March 1, 1926, in the sum of $25,500.00, there-

fore, the original obligation was $40,000.00. That note was renewed and paid on from time to time until George Peckham died. The money was deposited to the credit of the Wichita Royalty Company when the original loans were made. After Mr. Peckham died, Mr. Scannell succeeded him as trustee, and he renewed the note and paid on it. This represents the balance unpaid on the original obligation, and this balance has never been paid. I turned that over to our lawyers, and agreed to pay an attorney fee, provided in the note, of ten percent.

This note which you now hand me, Texas Investment Company note, shows it has an unpaid balance of $28,000.00. That note originated in the bank during Mr. Peckham's lifetime, and was not in any way, so far as I know, connected with the Wichita Royalty Company up

453 until the time of Mr. Peckham's death. That was a renewal of certain indebtedness that the Texas Investment Company owed, the Texas Investment Company and the Marlborough Addition are the same concern. The note was indorsed by the Wichita Royalty Company after Mr. Peckham's death, prior to Mr. Peckham's death it was handled in the Marlborough Addition and indorsed by Mr. Kemp and Mr. George W. Peckham and myself. Mr. Peckham's name was left off after his death, because the Wichita Royalty Company claimed an undivided one-half interest in those properties, that is, E. E. Scannell as trustee, claimed them. He told me personally that the Wichita Royalty Company owned half of what is known as the Marlborough Addition and set up a claim to that for his trust estate. When he told me that, we then substituted the indorsement of Mr. Peckham, with that of the Wichita Royalty Company, and set up a corporation to handle the property known as the Texas Investment Company. That corporation had actually been in process of formation prior to Mr. Peckham's death, the papers had not been filed. But Mr. Peckham had signed them after Mr. Scannell advised me of the ownership by the Wichita Royalty Company of this half interest in the Marlborough Addition he indorsed the

note, and it was renewed from time to time. Interest was paid and payments were made on the principal. Mr. Scannell contributed to the payment on the principal from the funds of the Wichita Royalty Company.

The relative liability of the indorsers on the note were, fifty percent for the Wichita Royalty Company,
454 Twenty-five percent for J. T. Harrell and twenty-five percent for J. A. Kemp.

When the note fell due and was not paid, I foreclosed under the terms of the pledge agreement, to sell the assets. They brought twenty-thousand dollars, the note shows a credit for that amount, leaving a balance of $21,500.00 owed on the note, and that would be distributed, fifty percent for the Wichita Royalty Company, twenty-five percent for J. A. Kemp and twenty-five percent for myself. The Wichita Royalty Company would owe fifty percent of the deficiency on that note, which has never been paid.

Direct Examination.

By Mr. Boone:

I became connected with the City National Bank in January, 1920, that was the City National Bank that is commonly known as the old bank. The new bank was organized in March, 1933, and its name is the City National Bank in Wichita Falls. I came from Clarinda, Iowa. Before I came to Wichita Falls, I was connected with the Clarinda National Bank for a period of nine years, prior to that time, I was with the National State Bank of Mount Pleasant for two and a half years, and prior to that with the Winfield State Bank approximately two years, and prior to that with the Oxford State Bank of Oxford, Iowa, between five and six years. My principal business has been banking. I came to Wichita Falls in January, 1920. At the time I became connected with the City National Bank of Wichita Falls, I was
455 Junior Vice-President. There were several vice-presidents at that time, Mr. Snyder, and Mr.

Langford, and Mr. Kemp was the President. Mr. Robertson was also a junior vice-president. At the time I came to Wichita Falls I did not have any place in the affairs of the bank, because I was not acquainted. I met Mr. Peckham prior to coming to this bank, that is, this building. The bank consolidated and moved into this building in May, and I met Mr. Peckham. Mr. Snyder introduced me to Mr. Peckham in the lobby of the old bank, in May, 1920. I recall that when Mr. Snyder introduced me to Mr. Peckham that Mr. Peckham had just been married or was about to marry, a woman who worked for the City National Bank. I do not recall her association with the bank, but I do recall Mr. Snyder saying he was marrying an employee of the bank. At that time I should judge the bank had probably fifty employees. I had not gotten well acquainted with all of the employees before we moved into this building.

Since this suit has arisen, I have found out what George Peckham owed the City National Bank at the time I came here; the records indicate in January, 1920, $10,544.00. I was not acquainted with Mr. Peckham then, and had nothing to do with making that loan. He was loaned an additional amount which increased his total, on February 5, $13,570.00. On February 9, his loan was increased to $15,990.00 and then a second note on that same day, increasing his balance to $18,431.00. On February 10 it was increased to $21,471.00. I am reading from the liability ledger of the City National Bank of Wichita Falls
456 in the year of 1920, beginning in January. The peak of his loans was $26,269.26, February, 1920. Payments were made during 1920, until 1921, he owed the bank $8,644.36. It was toward the latter part of 1920 before I had any contact with Mr. Peckham, or knew him personally. I had nothing to do with making these loans when the peak reached something over twenty-six thousand dollars.

My authority, as Junior Vice-President was not enlarged to any great extent after we moved to the new bank in May, 1920, due to the fact that the bank had gone

into a consolidation in May, 1920, the National Bank of Commerce, it was what you might say was over-officered. it brought two banking families together and the senior officers of both of the banks for a period of years. Mr. Snyder and Mr. Robertson and Mr. Jones with the City National Bank. Mr. Reed and his associates. I was a new man in the community and the very fact of those two families going together and my lack of acquaintance. I did not have any prominent place. I occupied the last desk in the row of offices for some year or more. I worked on the principal part of the collections.

Some time in 1921 they turned over to me this $26,000.00, with some credits and renewals on it, of George Peckham, for collection. After I took over that matter for collection, I had regular contacts with Mr. Peckham, and the item was charged off, I think, in 1921. I don't think I ever made any collection from Mr. Peckham. The reason I fix these dates is because of the fact that the notes I handled were hard notes, and because of
457 my lack of acquaintance. Mr. Peckham had reduced this item down and had gotten in strained circumstances financially, and could not pay his note, and the note was at that time out of the active assets of the bank—that was 1921, in December, and the amount charged off at that time was $8,644.36, by the banking officials.

Mr. Peckham's attitude toward his obligation was always very good. He did everything he could to protect his obligations and I recall very distinctly soon after this note was charged off, that I had a conversation with him, and in that conversation it developed for the first time, that he knew that his note was not in the active files, and it worried him considerably. The next day he came in, after the renewal of this note—I don't remember the exact date—I remember we had other conferences on the maturity of the note, and he brought me in a deed to his home. He was married and lived on Monroe Street, Lot 3, Block 80, was his homestead. The deed which he brought was signed by himself and Mrs. Peckham. He

voluntarily gave me the deed. I did not ask him for it, and he said he would move out any day we wanted him to move out, and that he could not pay the note. I told him that we were not asking for his homestead, that the folks believed in him and we thought that he would make every effort to protect his liability and he insisted on leaving the deed with me and I filed it in my desk. I reported the fact of his attitude to the directors of the bank. As far as I knew, Mr. Peckham was telling us the truth. I knew of no assets that he had at that time. After
458 that he continued to come back periodically on the obligation as it matured. I think the record will indicate there was some kind of a short renewal, sixty, ninety and one hundred and twenty days. He always came in on time, and finally redeemed the note: May 19, 1923, he paid $144.26; December 18, he paid $500.00; February 21, 1924, he paid $3,000.00; June 11, 1924, he paid $5,000.00.

I have not had any experience in bookkeeping for a good many years, and did not keep any of the books of the old bank, however, I am refreshing my recollection from the records that were kept.

The attitude Mr. Peckham exhibited toward his indebtedness gave me a favorable impression of him, and not only me but my associates in the bank; naturally we felt that he had done everything that he possibly could to protect his obligation. It made us feel that he regarded his obligations seriously. During none of that time did I ever hear anyone charge George Peckham with being a man that would not pay his obligations or was not honest, or cast any reflection on him. From that time until 1929, when he died, I never heard anyone cast any reflections on George Peckham.

By virtue of Mr. Peckham's attitude toward the charge off of the $8,600.00 note, I did not have the slightest inclination to have any doubt concerning what he said to me about any transaction I was engaged in. George Peckham died in November, 1929, and during the time I never heard his honesty and integrity questioned.

459 he was well regarded. After George Peckham's financial distress in 1932, and up until the time he died, he was an active trader, he bought and sold oil properties, oil and gas leases. From 1921 up until the time of his death, at times, he kept large amounts of money in the bank, and large sums of money passed through the bank. I never at any time had anything brought to my knowledge, of any kind or character with reference to any suspicion concerning Mr. Peckham's misappropriation of any funds.

In 1929 is what is commonly known as the stock market blowup, and the panic was precipitated in Februnry, 1929 and 1930.

Mr. Kemp died November 16, 1930. He was chairman of the old City National Bank up until the time of his death, had been connected with the bank prior to my connection, for many years. Mr. Kemp was recognized as one of the prominent leaders of this community. In other words, we heard him called the Daddy of the Town. He was foremost in civic matters and business matters. He owned large blocks of real estate and stocks and various corporations locally, he was regarded as one of our most substantial citizens. George Peckham was also well regarded financially. On November 7, 1929. Mr. Peckham died very suddenly in the Wichita Club, on the elevator coming down. He died instantly, and did not have time to prepare his financial affairs before his death. Mr. Peckham was a customer of the City National Bank during the time I was connected with it. How-
460 ever, he did business with other banks, the Security National Bank, and some, perhaps, with the Wichita National. Mr. Peckham advised with me occasionally with reference to his financial affairs, his loans was known and approved by the bank's board of directors.

I will give you a history of the City National Bank, the old bank; Wichita Falls was coming through what was commonly known as a boom on account of the oil fields from Burkburnett. Everything was active, the city was

full of people. I recall when I first came down here that remarks were made that there was some two to two and a half families to every residence. The banks had large deposits, large loans, money apparently was being made easily by many people, who spent it in the same way. Soon after coming down here, the old National Bank of Commerce and the City National Bank formed a consolidation which made a large institution, bringing together at the peak, I think it was twenty-two million dollars deposits. If I recall, the loans were eighteen million dollars—those are just approximations—oil was selling at $3.50 per barrel in 1919, and the forepart of 1920. Soon after that, there was a tremendous cut in the price of oil, which caused—I might go further and say, that not only the price of oil declined, but the inflation which was caused by the reaction of the world war had set in on real estate values. All values commenced to decline, and it was about 1921 or 1922 that real estate values all over
the central part, in fact, all over the United
461 States, and especially through the central states, caused tremendous bank failures over the country in those agricultural sections. Our deposits declined from a peak of the consolidation to within eighteen months they were down to between six and seven million dollars, which called for a tremendous liquidation of loans. From 1923 we gradually begun to overcome that tremendous deflation. Our deposits increased and our loans were made satisfactory and business conditions were more satisfactory, and the bank was getting along in a very satisfactory situation, had the confidence of the community and I had become more active in the management of the bank, and personally felt that we were getting on a stable basis, to the extent that I made large investments in the bank's stock, that is, large for me. I was never considered a wealthy man. Everything went along smoothly and satisfactorily until the failure of the American Refining Company. The management of that company was directly made up of folks who were interested in the City National Bank, they were, P. P.

Langford, who was one of the prominent stockholders in the American Refining Company and the indorser on a large amount of paper. He was president of our bank. Mr. Kemp was chairman of the Board. Mr. Chenault, considered a very substantial man, was also a director of the American Refining Company, Mr. Walter Priddy, while he was not a director, was closely associated with the City National Bank and was one of our customers.

Mr. W. W. Silk was a director of our bank. Mr.
462 Bashara was closely associated with the bank and had an active account and we loaned him substantial sums of money, so the men I am talking about were substantial financially. They were all interested as directors and indorsers on large sums of money—millions of dollars—for the American Refining Company and these men failed with it financially. Mr. Langford resigned as president of the bank, and I succeeded him.

The fact of this failure and the close association with this huge industry, with the City National Bank, disturbed this community, as far as their attitude toward the City National Bank was concerned. They wondered if we were not involved with the American Refining Company. I noticed it and feared it, but we overcame it. Another year or two passed and we felt ourselves growing away from that disturbance of confidence. You must have the confidence of a community in a banking institution. Mr. Kemp then died. Mr. Kemp, as I said a moment ago, was considered the father of this community. He was first in everything locally, in public enterprises and you always saw Mr. Kemp in those enterprises. He was the man who fathered our irrigation system, the man who gave us our library and was known as a man that contributed largely of his means and was recognized as a rich man. Due to the fact that he had gotten under large obligations for some of the members of his family, after his death it became known that he was badly insolvent. He died in November, 1930, and naturally that disturbed this community.

463 The stock crash of 1929, of course, we all know what it did to the whole country. Then the

American Refining Company, the stock crash, and Mr. Kemp's death, people lost faith. The local people lost faith in the City National Bank, and there was a question whether or not they would be able to survive. A continuous withdrawals of funds set in. Back in 1929—the latter part of that year, and all through 1930, until it looked like at the end of 1930 they were going to call for us to liquidate this bank. The Board of Directors of The City National Bank were solidly in behind me in the thought to save the institution. There never was a question, in my mind, but what the depositors of the City National Bank could get their money. Whether or not we would be able to continue to pay them on demand was a question. We never, at any time, had what was known as a run, which would begin and end on a day and wind the thing up. But it was what is known as a dry run, which runs you crazy. We continued that liquidation at a time when, if we called on anybody in this room to pay their obligations it would have ruined them. We did not sue anybody. We collected notes when people were able to pay only. We did not press them. We pledged our own assets, which had been deflated and would not sell for much, but we were enabled, through, I am not talking about myself, but through the men I was associated with, to borrow money, to get credit and to continue to pay these deposits on demand, until in
464 1930 we had liquidated our deposits down to less than $2,000,000.00. I cannot tell you the figures right now, but if the public deposit was taken from that, which was secured by government bonds, you would find that we practically liquidated the old City National Bank. Then the general situation throughout the United States, closing the banks. More than five thousand banks closed, and the moratorium came along, and we were still open. Never did anybody come into the City National Bank under those trying circumstances and ask for their money that they did not get it, on their account, if they had it in the bank. The Moratorium came along, which closed all the banks for the holiday. We knew if we continued final

liquidation, the question came up in our minds, whether we would turn over the public deposit, to some other bank, and finish liquidating the unsecured deposits, or whether we would try to go on and carry on in the community. We got together and decided that this institution had, or still had, a place in this community and we believed that it had a lot of friends, if they could come to the point where they thought we were going through and were not going to fail, that was in March, 1933, during the moratorium. Our cash resources were very low when the moratorium struck. We were going along just like we had, but if the moratorium had not come, I am not saying what would have happened. We were in the position of going along from day to day. Not from the question of solvency or insolvency, but a question of ability to meet these cash withdrawals, so we
465 decided if we continued as a banking institution that we would have to put some new money into the bank. We realized that our capital was impaired, and that values of our assets had so shrunk, that it would be necessary to set up a new working capital. The New City National Bank was organized with a capital stock of four hundred thousand dollars, and a preferred stock, subscribed by the Reconstruction Finance Corporation, of four hundred thousand dollars. We arranged for credit with the Federal Reserve Bank and the Reconstruction Finance Corporation, on top of that, for substantial sums of money, and we opened our doors after the moratorium and it seemed that people realized then that we had won our battle. We have never censored the attitude of the community. We have always felt they were justified in having their fear under those facts I have outlined to you. They were just like the rest of us would be under the circumstances. We were very grateful when they felt that we had won the battle, and that they came back and the new bank is going forward, and is in sound condition. I want to say this further thing, in the history of that crisis, that I was surrounded by some of the best men in this community—this struggle, of course, of the institu-

tion is quite close to me. When I think of the loyalty of my associates, it sort of gets on my emotions, but I just want to make this statement. That I called on my directors and my present stockholders to underwrite millions of dollars in order to continue this institution, and I never presented a document to them,
466 under these circumstances, if they were called upon, at the maturity of those obligations, it would have absolutely wrecked them financially, but they signed every one that I stuck under their noses, and we won a victory in this community.

I was acquainted with the assets and liabilities of the old bank. I made the statement to my directors time and time again that we would eventually pay our deposits. It was a question of whether we could collect funds enough to meet the withdrawals. The old bank is in position to pay this amount if a judgment is gotten in this case, it has sufficient assets.

The directors and stockholders that underwrote the obligations of this bank never paid one penny of those obligations which they underwrote personally; the obligations were all obligations of the bank, underwritten by these gentlemen, and the bank paid its obligations, without calling on the stockholders and directors for any money.

We undoubtedly filed some suits, I meant when I spoke about filing suits, that very few suits were filed. In this manner, there was no lawsuits filed prior to the time of the repudiation by the Wichita Royalty Company. Prior to the time this suit was filed, I took it up with Mr. Scannell, then trustee of the Wichita Royalty Company, and attempted at that time to get him to go forward with the obligation; he had previously thereto acknowledged it, but before the filing of this suit he disavowed the same, and suit was filed.

467 Cross Examination.

By Mr. Rogers:

I think during this period we filed suit against Mr. Fain, there was no controversy over the liability. I did

not ask Mr. Fain if he would fire Mr. Scannell as an employee.

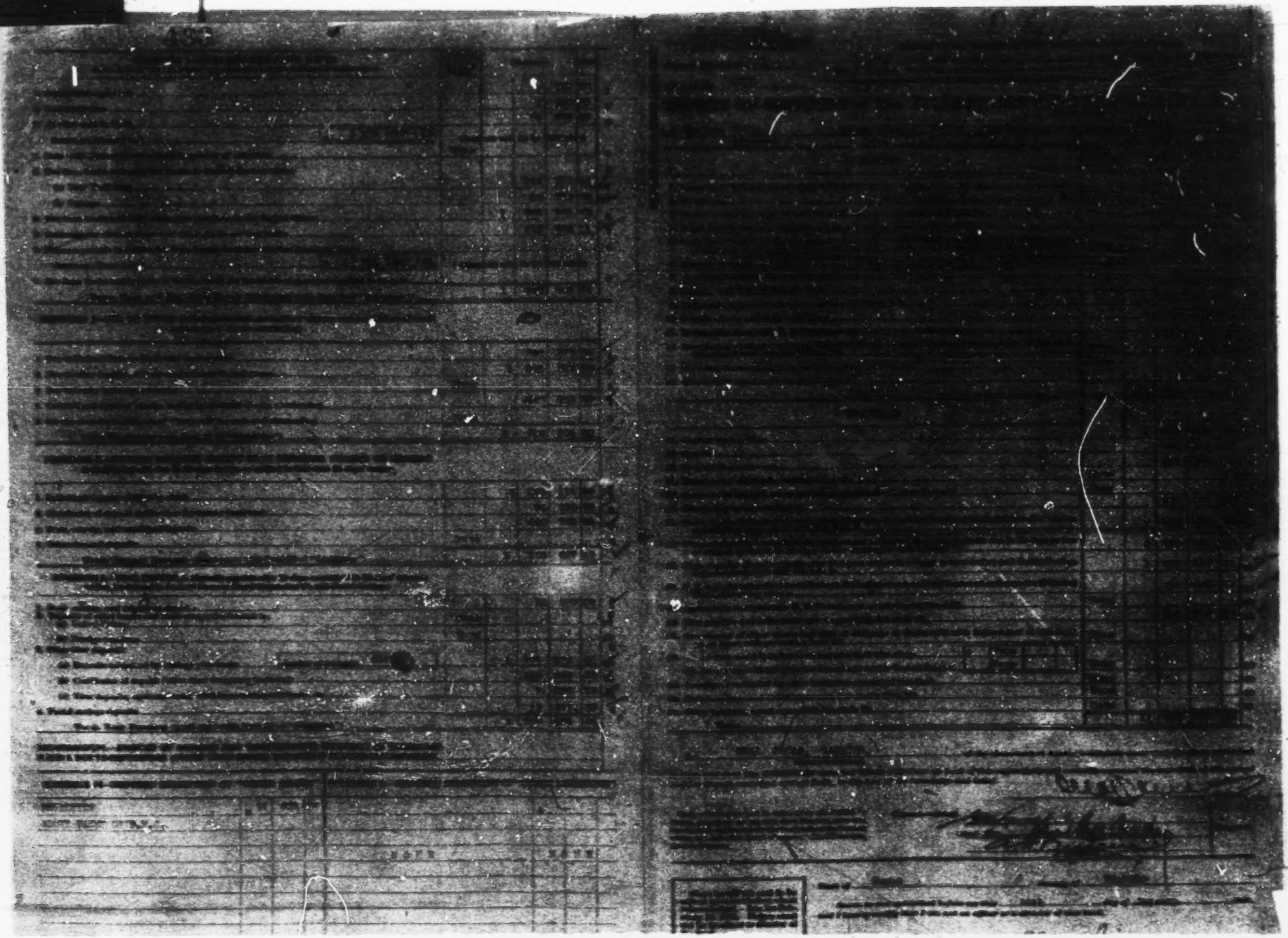
I think it first became apparent that the capital of the old bank had become impaired in January, 1932; in 1931, the bank was over extended, but the capital was intact, and I think the bank had a surplus at that time. In 1931, it was necessary to put cash in the bank to meet withdrawals, that was in October.

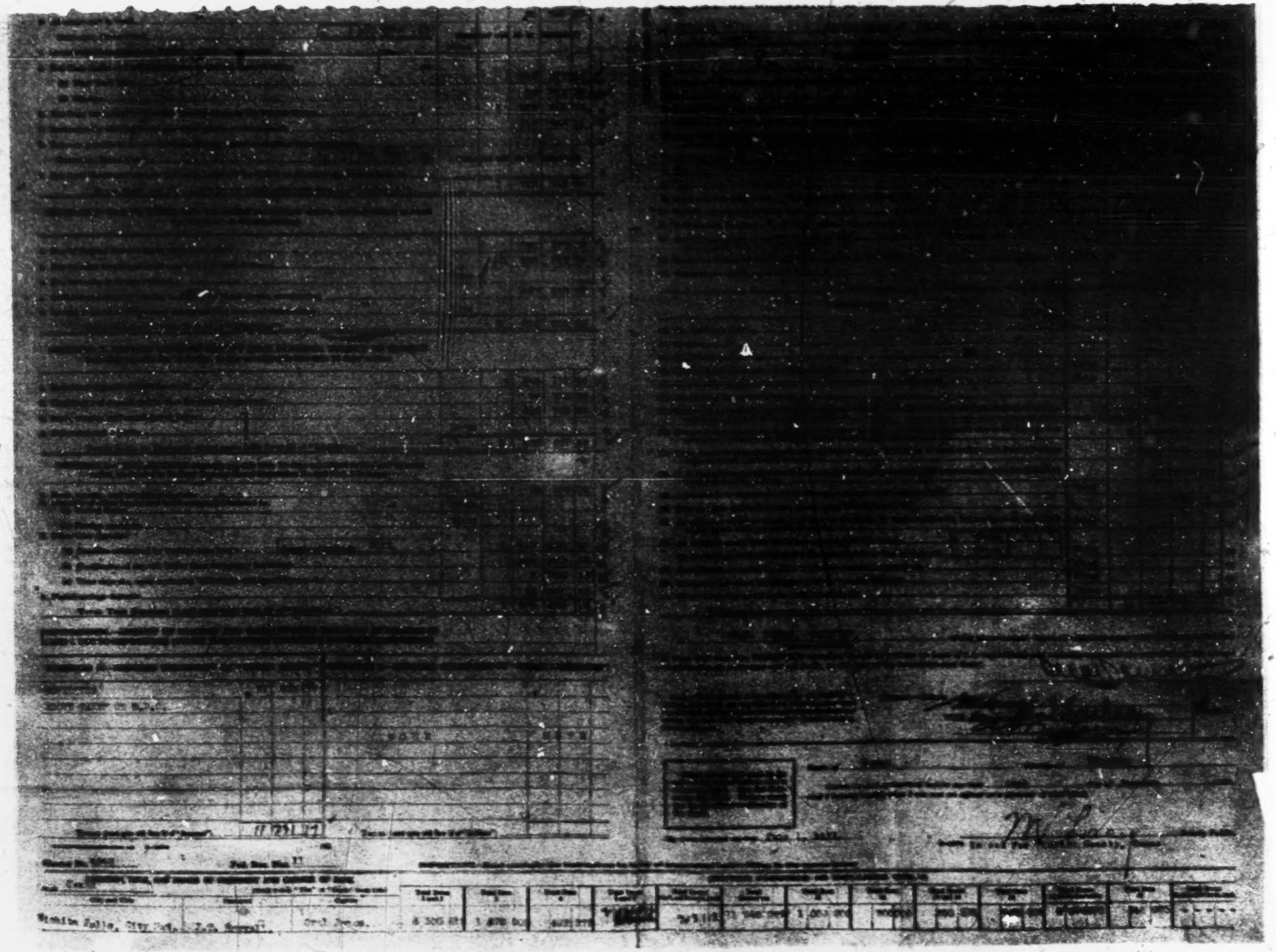
We have the reports which we make and publish, with reference to the bank, in 1929. The last report in that year is dated December 31. The report to the public is a condensed report, and the one to the comptroller is more in detail. Here is the public report here, it shows the capital, surplus and undivided profits. This is for December 31, 1929. I also have here the statements for December 31, 1930, December 31, 1931, December 31, 1932.

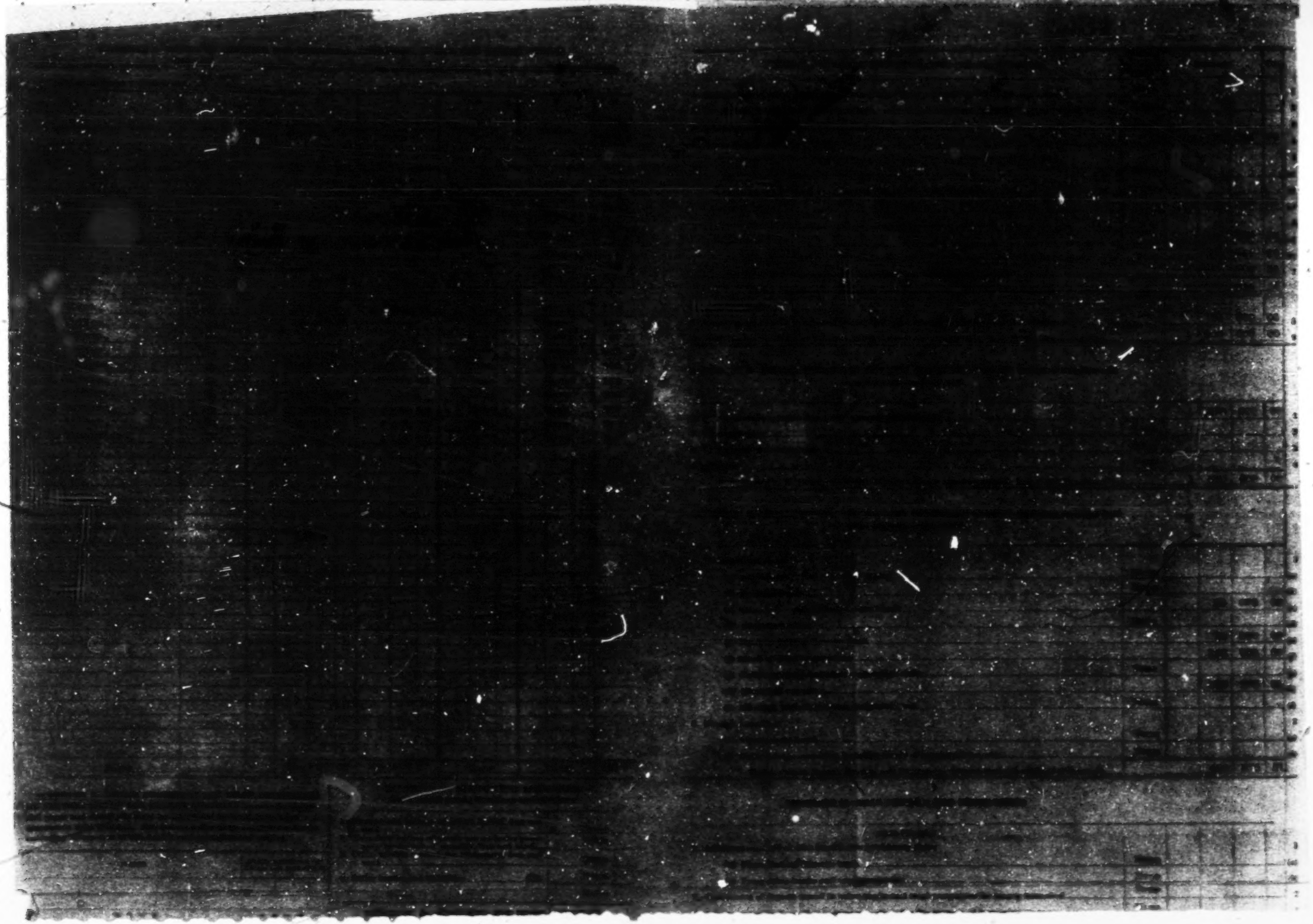
Mr. Rogers:

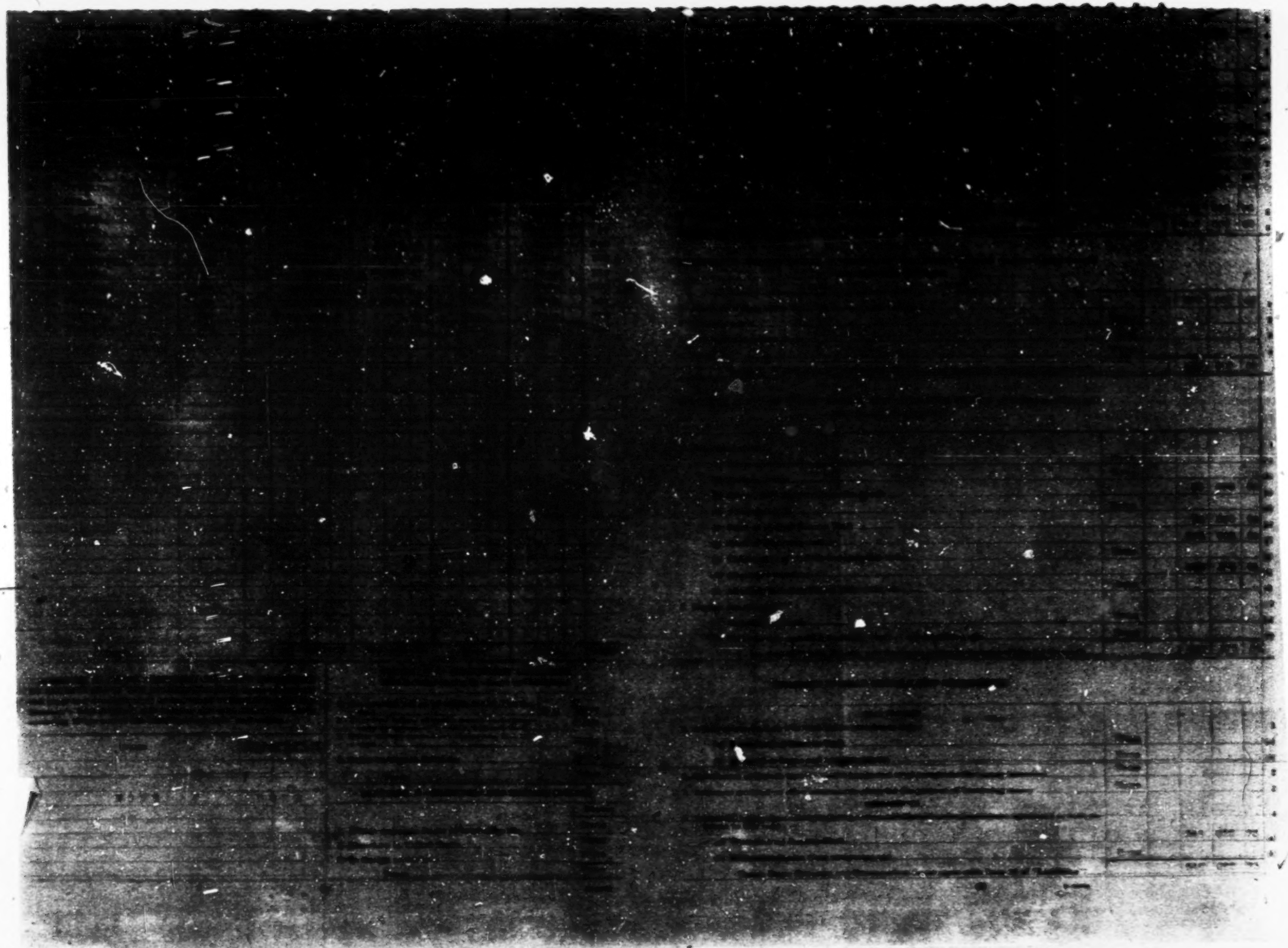
We offer those statements in evidence.

(Instrument marked "Defendant's Exhibit No. 1-4" and reading as follows:)









[illegible]

SCHEDULE J—DUE TO BANKS (including certified and cashiers' checks, and cash letters of credit and travelers' checks outstanding)

1. Due to Federal Reserve Bank (member banks)		
2. Due to other banks and trust companies in United States		
3. Due to banks in foreign countries	None	
4. Certified and cashiers' checks, including dividend checks, outstanding		
5. Letters of credit and travelers' checks sold for cash and outstanding	None	
Total (must agree with Item 21 of "Liabilities")		

SCHEDULE K—DEMAND DEPOSITS (EXCEPT BANK DEPOSITS) SUBJECT TO RESERVE (including deposits due in 30 days or less or subject to less than 30 days' notice)

1. Individual deposits subject to check		
2. Certificates of deposit (other than for a note borrowed)		
3. State, county, and municipal deposits		
4. Other demand deposits	None	
Total Demand Deposits (must agree with Item 22 of "Liabilities")		

SCHEDULE L—TIME DEPOSITS (deposits payable after 30 days or subject to 30 days' or more notice, or deposits in Postal Savings Bank Regulation 11; and Postal Savings)

1. State, county, and municipal deposits		
2. Deposits of other banks and trust companies included in:		
(a) United States	None	
(b) Foreign countries	None	
3. Other time deposits:		
(a) Deposits evidenced by savings pass books — number of accounts [illegible]		
(b) Certificates of deposit (other than for money borrowed)		
(c) Time deposits, open accounts, Christmas savings accounts, etc.		
4. Postal savings deposits		
Total Time Deposits (must agree with Item 23 of "Liabilities")		

SCHEDULE M—STATEMENT OF "OTHER ASSETS"

[illegible]	
[illegible]	
NONE	

SCHEDULE N—STATEMENT OF "OTHER LIABILITIES"

NONE

[illegible]

REPORT OF CONDITION of The [illegible] at the close of business [illegible]

[illegible]

1. [illegible]		
2. [illegible]		
3. [illegible]		
4. [illegible]		
5. [illegible]	None	
6. [illegible]		
7. [illegible]		
8. [illegible]		
9. [illegible]		
10. [illegible]		
11. [illegible]		
12. [illegible]		
13. [illegible]	None	
14. [illegible]	None	
15. [illegible]		
16. [illegible]		
Total		

LIABILITIES

17. Capital stock paid in		
18. Surplus		
19. Undivided profits—net		
20. Reserves for dividends, contingencies, etc.	None	
21. Reserves for interest, taxes, and other expenses accrued and unpaid	None	
22. Circulating notes outstanding		
23. Due to banks (including certified and cashiers' checks, and cash letters of credit and travelers' checks outstanding) (must agree with Schedule J)		
24. Demand deposits (except bank deposits) subject to reserve (including deposits due in 30 days or less or subject to less than 30 days' notice) (must agree with Schedule K)		
25. Time deposits (deposits payable after 30 days or subject to 30 days' or more notice) and Postal Savings deposits (must agree with Schedule L)		
26. Bank deposits (other than Postal Savings), including war-loan deposit account and deposits of United States disbursing officers		
27. Agreements to repurchase U. S. Government or other securities sold	None	
28. Bills payable and rediscounts (must agree with Schedule H)	None	
29. Assignment of other banks' and bills of exchange or drafts sold with indorsement of this bank (must agree with per contra Item 17)	None	
30. (a) Acceptances issued by this bank to customers and to banks abroad	None	
(b) Less amount of this bank purchased or discounted and which is "Less old drafts"	None	
31. Acceptances executed by other banks for account of this bank	None	
32. Securities borrowed (must agree with per contra Item 13)	None	
33. Other liabilities (must agree with Schedule N)		
Total		

I, [illegible], cashier of the above-named bank, do solemnly swear that the above statement is true, and that the SCHEDULES attached hereto and thereon on back of this report fully and correctly represent the true state of the general matters thereon contained and set forth, to the best of my knowledge and belief.

[illegible], Cashier

Correct—Attest:

[illegible], Directors.

SCHEDULE K—DEMAND DEPOSITS (EXCEPT BANK DEPOSITS) SUBJECT TO RESERVE

(Individual deposits that are 30 days or less or subject to less than 30 days' notice)

1. Individual deposits subject to check
2. Certificates of deposit (other than for money borrowed)
3. State, county, and municipal deposits
4. Other demand deposits

Total. (Must agree with Item 22 of "Liabilities")

SCHEDULE L—TIME DEPOSITS (deposits payable after 30 days or subject to 30 days' or more notice, or deposit in Federal Reserve Bank Acquisition Dr. and Postal Savings)

1. State, county, and municipal deposits
2. Deposits of other banks and trust companies located in:
   (a) United States
   (b) Foreign countries
3. Other time deposits:
   (a) Deposits evidenced by savings pass books
   (b) Certificates of deposit (other than for money borrowed)
   (c) Time deposits, open account, Christmas savings, school, etc.
4. Postal savings deposits

Total Time Deposits (must agree with Item 23 of "Liabilities")

SCHEDULE M—AMENDED STATEMENT OF "OTHER ASSETS"

MISCELLANEOUS,
Total (as per Sch. F, C. C.)

Total (must agree with Item 9 of "Assets")

SCHEDULE N—AMENDED STATEMENT OF "OTHER LIABILITIES"

Total (must agree with Item 31 of "Liabilities")

Charter No. [illegible] Fed. Res. Dist. 11

LOCATION, TITLE, AND NAMES OF PRESIDENT AND CASHIER OF BANK

City and State	President	Cashier
Florida Falls, City Nat.	J. T. Howell	Orel [illegible]

CONDITION OF THE BANK AT THE CLOSE OF BUSINESS ON [illegible]

[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	None	None

LIABILITIES

10. Capital stock paid in
16. Surplus
17. Undivided profits—net
18. Reserved for dividends, contingencies, etc.
19. Reserved for interest, taxes, and other expenses accrued and unpaid
20. Circulating notes outstanding
21. Due to banks, including certified and cashiers' checks and cash letters of credit and travelers' checks outstanding (except those shown in Schedule J)
22. Demand deposits (other than bank deposits) subject to check, including deposits due in 30 days or less or subject to less than 30 days' notice (must agree with Schedule K)
23. Time deposits (deposits payable after 30 days or subject to 30 days' or more notice) and Postal Savings deposits (must agree with Schedule L)
24. U. S. deposits (other than Postal Savings), including war loan deposit account and deposits of United States disbursing officers
25. Agreements to repurchase U. S. Government securities sold
26. Bills payable and rediscounts (must agree with Schedule B)
27. Acceptances of other banks and bills of exchange or drafts sold with indorsement of this bank (must agree with per contra Item 12)
28. (a) Amount owned by the bank on account of a joint loan agreement
    (b) The amount of the bank included or deducted not included in "loan on account"
29. Acceptances executed by order banks for account of this bank
30. Securities borrowed (must agree with per contra Item 13)
31. Other liabilities (must agree with Schedule N)

Total

[illegible] FORD, CASHIER.

I, [illegible], of the above-named bank, do solemnly swear that the above statement is true, and that the SCHEDULES attached hereto and above on back of this report fully and correctly represent the true state of the several matters therein contained and set forth, to the best of my knowledge and belief.

[illegible] Cashier

Subscribed and sworn to before me this [illegible] day of January, 1931.

M Lacy Notary Public

My Commission expires January 2, 1931

SCHEDULE A—NAMES OF OFFICERS AND DIRECTORS, LIABILITIES, IF ANY, AND SHARES OWNED

Par value of stock, per share, $ 200.00

Number of shares of stock issued 35,000

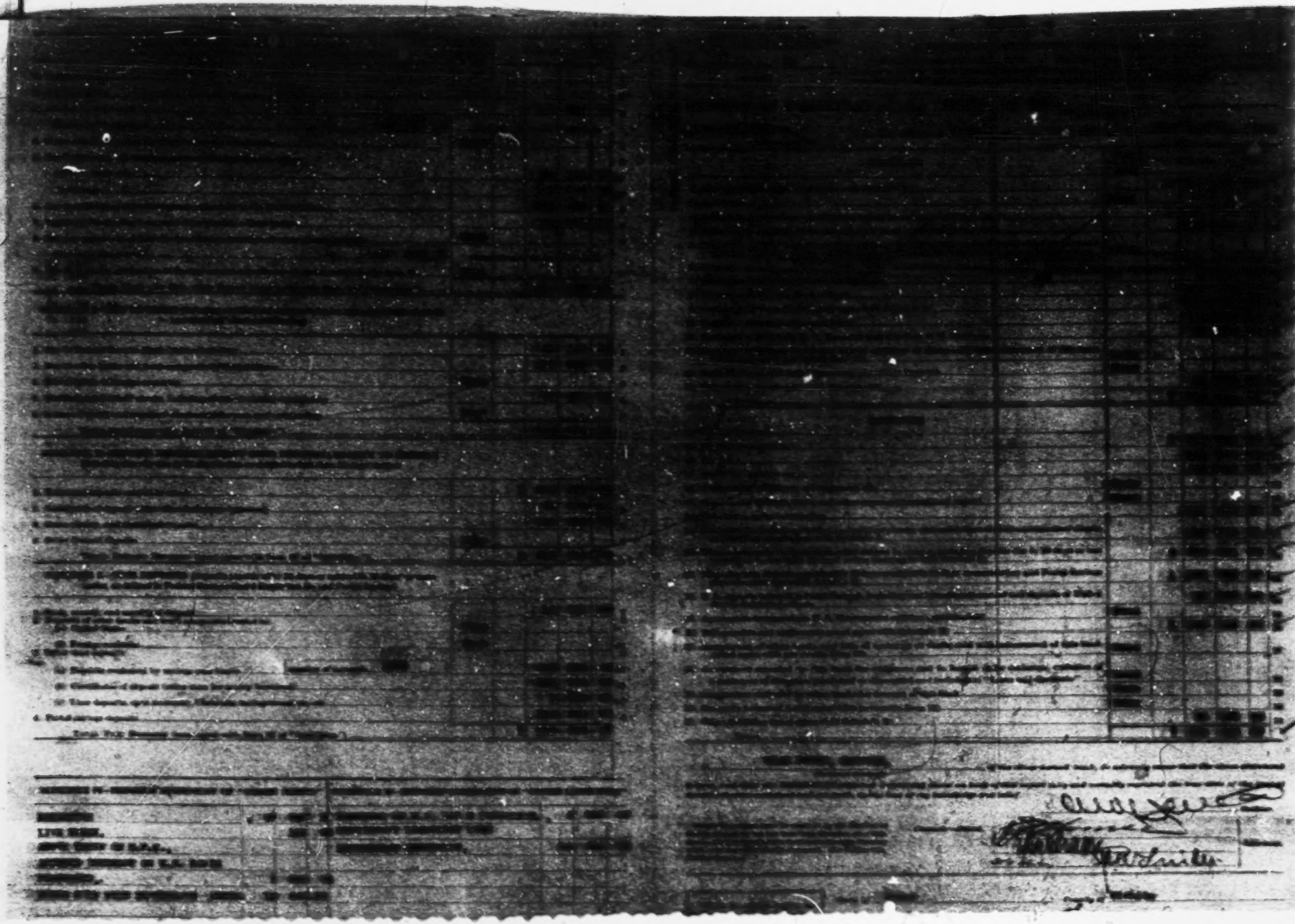
Names of officers and directors	Offices	Amount of stock owned at present date	Amount of stock owned at previous date	Liabilities	Shares pledged
J. L. Russell,	President	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]

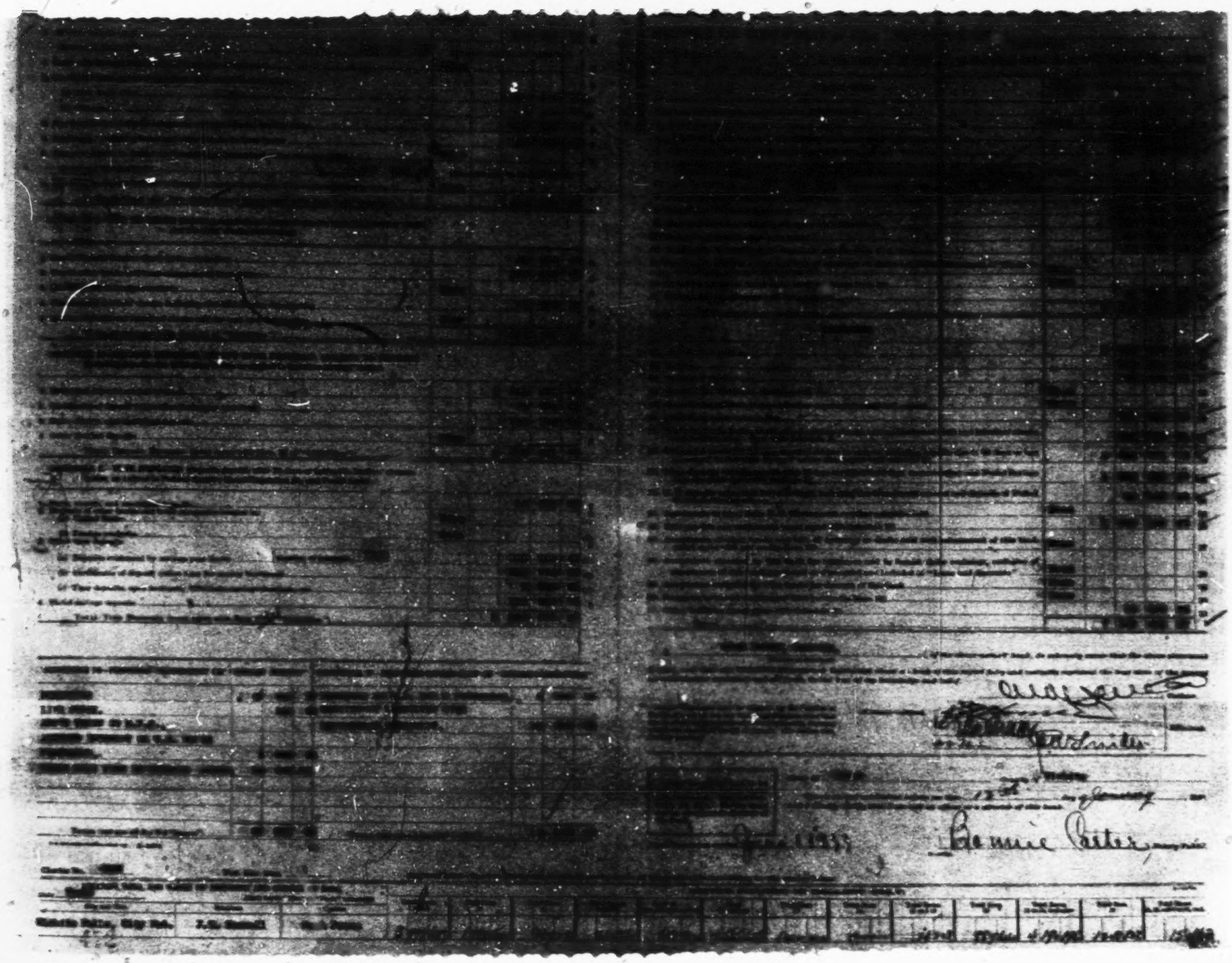
SCHEDULE B—LOANS EXCEEDING THE LIMIT PRESCRIBED BY SECTION 5200 OF THE REVISED STATUTES

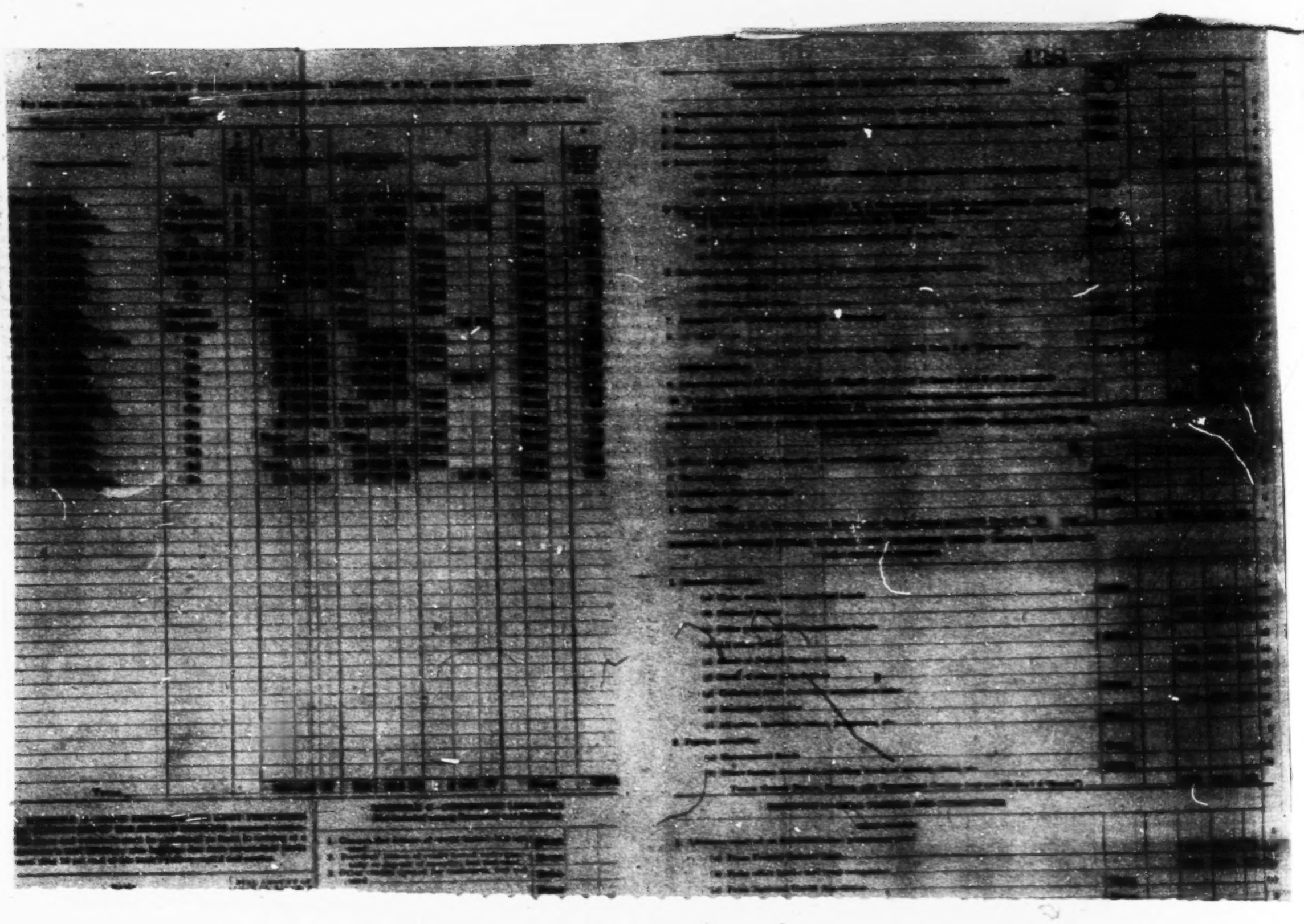
SCHEDULE C—CONTINGENT LIABILITIES

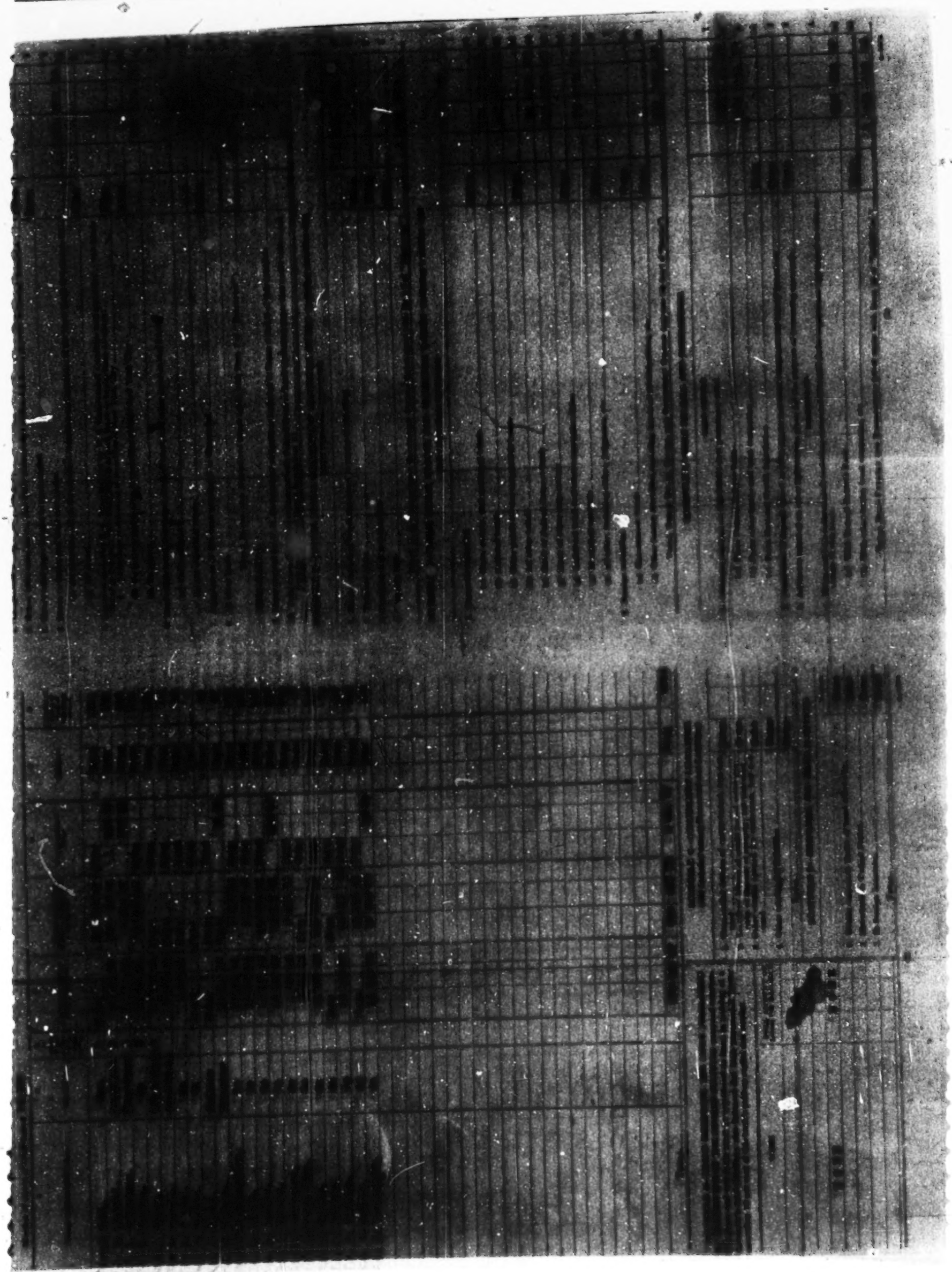
SCHEDULE D—BRANCHES AND BRANCH OFFICES

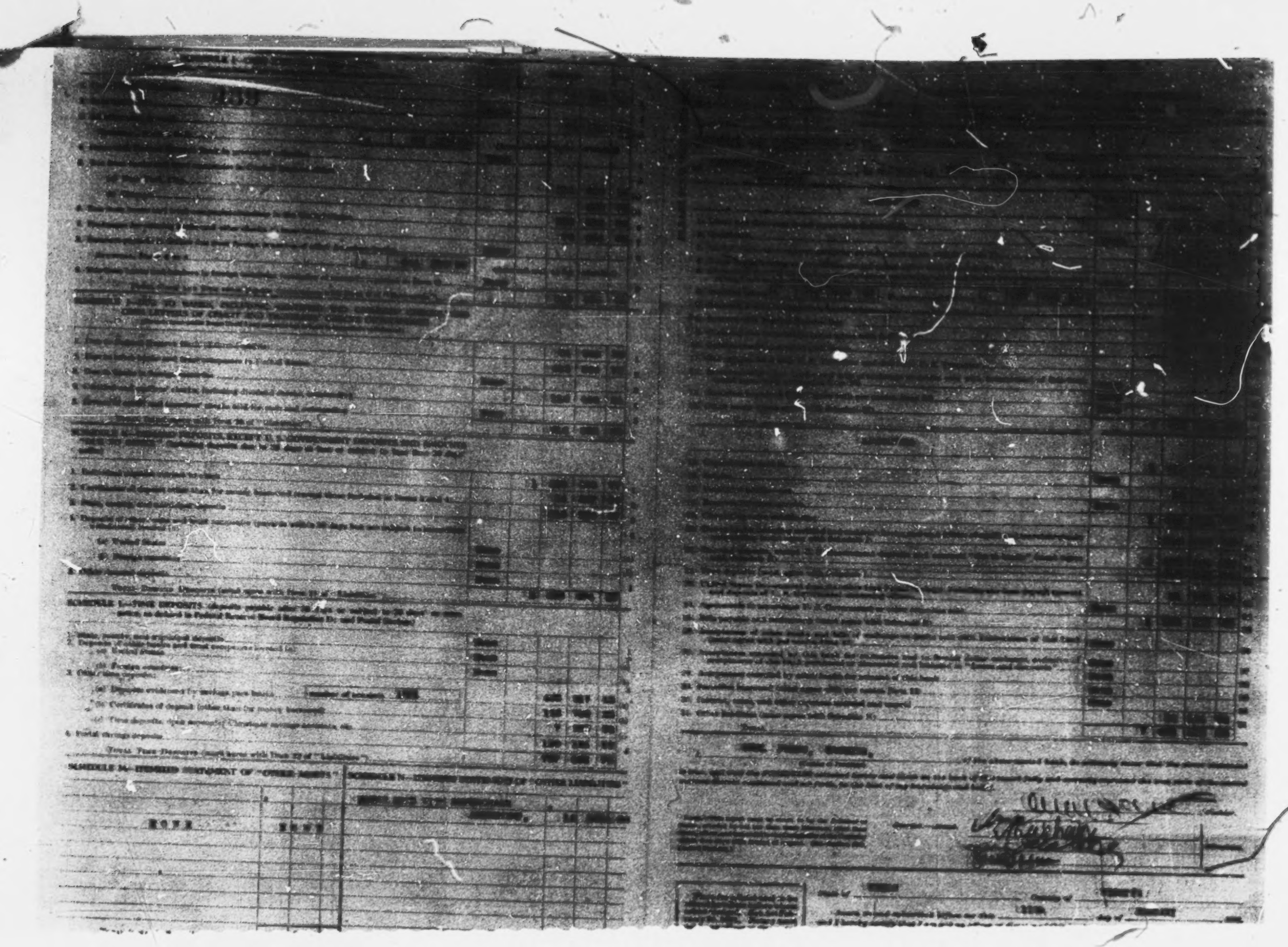
SCHEDULE H—BILLS PAYABLE AND REDISCOUNTS

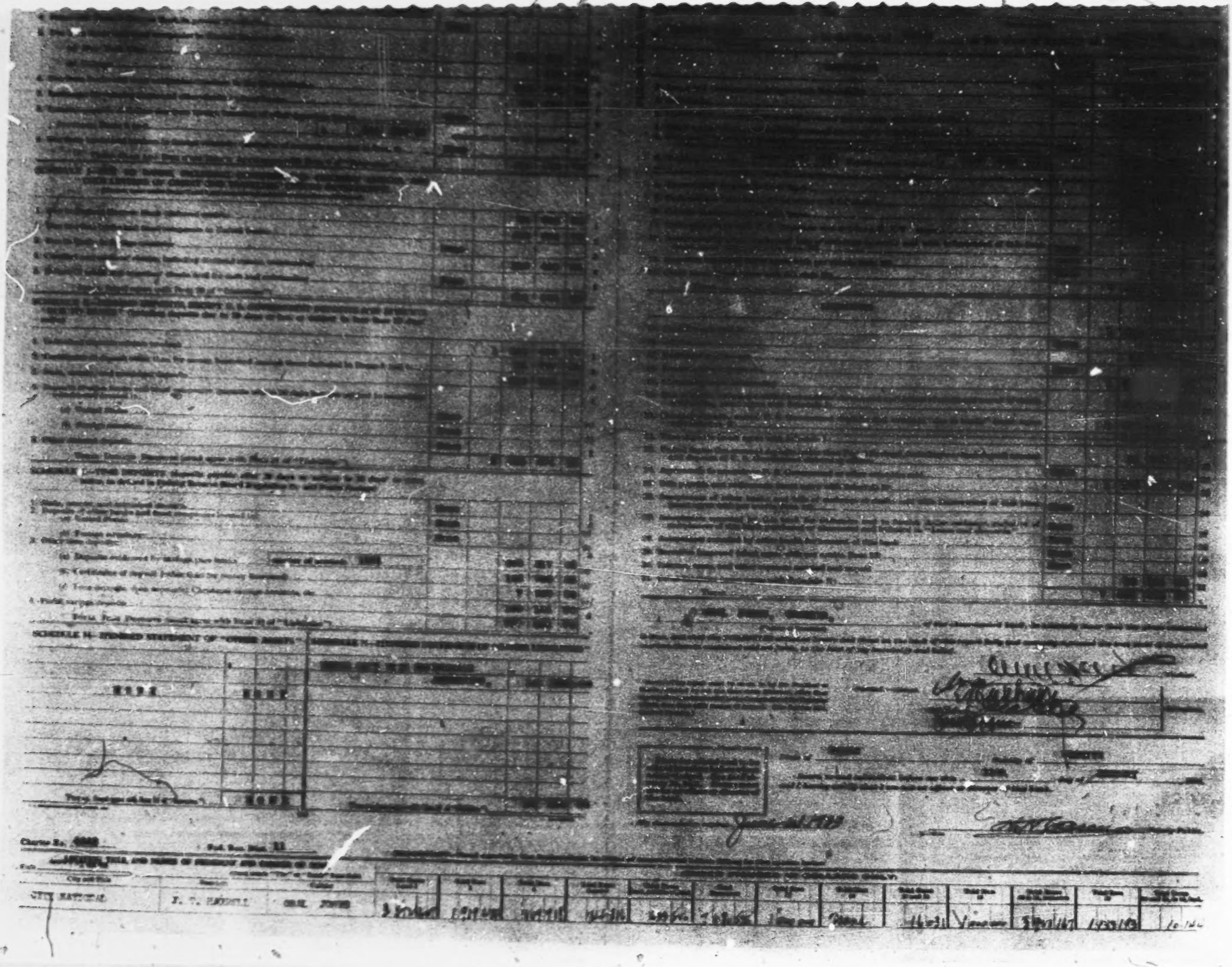


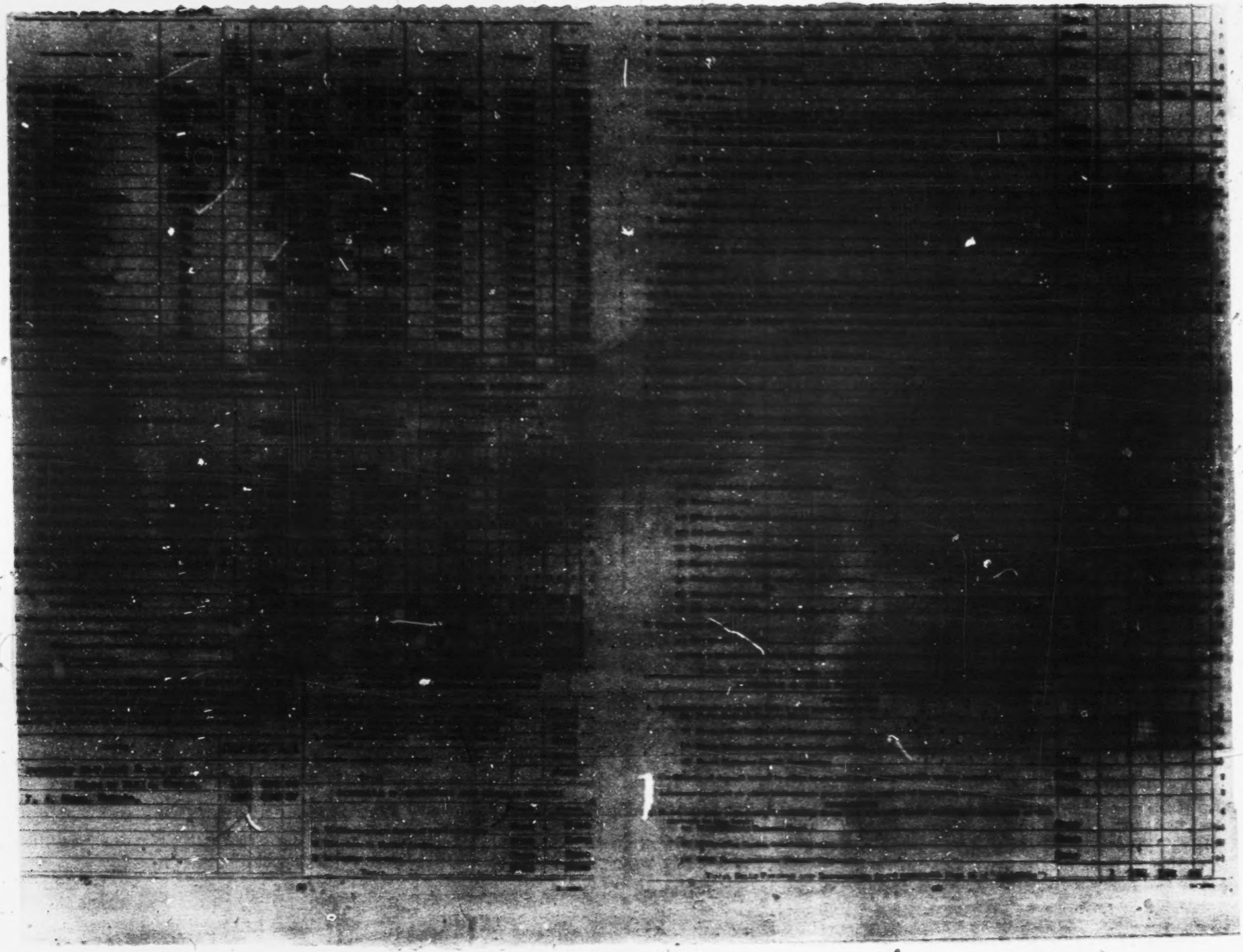












476 The Witness:

The date of the last statement issued in March, 1933, is January—it would be December, 1932, instead of January. There should be a report as of the date of the moratorium in 1933. We made a report as to the condition of the bank during or immediately following the moratorium. There is not any published report, they knew our condition, we had communicated it to them. I do not think I have any examination report, it was an informal report. The liquidating agent has made reports to the banking department since March 1, 1933. I was not liquidating agent, I was trustee of the bank, and continued to be its president. I am the president of the bank at this time, that is the old bank set up, the stock is still outstanding.

Here is the first report made after March 1, 1933.

Mr. Rogers:

We offer it in evidence.

(Marked "Defendant's Exhibit 5, as follows:)

TREASURY DEPARTMENT
Office of Comptroller of the Currency
Revised July 1, 1929

CHARTER No. 4248

442

REPORT OF LIQUIDATING AGENT of The CITY National Bank of WICHITA FALLS, located at WICHITA FALLS, TEXAS

for the Perjod ended December 31, 1933

ASSETS	On hand beginning of period	Collections during period	Loans or assets compromised, sold or charged off during period	Increase in assets from property purchased, reclaimed, or from charged off items returned to the bank during period	Balance on hand end of period	LIABILITIES	Amounts due beginning of period	Liabilities paid during period	Increase in capital stock, surplus, or undivided profits from assets compromised, sold or charged off, and recoveries	Decrease in capital stock, surplus, or undivided profits from loans or assets compromised, sold or charged off, and recoveries during period	Balance due period ended
1. Loans and discounts,	940,580.37	60,183.92	25,346.61	427,894.02	1,480,561.86	1. Capital stock paid in,	2,000,000.00				1,000,000.00
2. Overdrafts,	00					2. Surplus fund,	00				00
3. U.S. bonds to secure circulation,	2,000,000.00	997,625.00	2,375.00		00	3. Undivided profits,	(Bal.Sht.)		127,136.33	442,672.98	00
4. Other U.S. bonds,	00				00	4. Reserved for taxes, etc.,	20,000.00	3,797.20			00
5. Premium on U.S. bonds,	00				00	5. Circulation account,	1,000,000.00	1,000,000.00			00
6. Bonds, securities, etc., including premium on same,	95,332.75	13,956.88			81,375.87	6. Due to Federal Reserve bank,	00				01
7. 5% amount bonds to ret. of Fed. Reserve bk.,	30,000.00	30,000.00			00	7. Due to national banks,	00				00
8. Banking house furniture and fixtures,	507,000.00	150,000.00	357,000.00		00	8. Due to State banks and bankers,	00				00
9. Other real estate owned,	34,335.64	3,303.31	10,516.05	20,490.64	41,607.92	9. Individual deposits,	00				01
10. Due from Federal Reserve bank,	00				00	10. Savings deposits,	00				00
11. Due from national banks,	261.43	261.43			00	11. Cashiers' and certified checks,	00				00
12. Due from State banks and bankers,	1,631.04	1,631.04			00	12. Certificates of deposit,	00				00
13. Checks on other bank items,	2,229.81	2,065.97			1,163.84	13. U.S. deposits,	00				00
14. Total cash on hand,	00				00	14. Postal savings deposits,	00				00
15. Fund against redemption bank,	00				00	15. Rediscounts with Federal Reserve bank,	00				00
16. Due from U.S. Treasurer,	00				00	16. Rediscounts and bills payable,	669,641.84	211,736.36			865,896.64
17. Collected from interest,	00	65,562.62			00	17. Liabilities other than those above stated,	10,144.36	6,800.00			3,344.36
18. Collected from rents,	00	3,941.43			00	3/P due CNB in T		397,504.02			
19. Collected from charged-off assets,		87,625.25			00	O/D due CNB in T		13,600.02			
Due from banks charged off on prior reports and not paid,											
Totals,	2,610,741.01	1,356,027.32	395,237.66	527,894.72	1,480,561.86	Totals,	2,679,786.20	634,441.60	127,136.33	442,672.98	1,480,561.86

Total liquidating dividends paid to date, $ _____ percent

RECEIPTS AND DISBURSEMENTS FOR PERIOD ENDED DECEMBER 31, 193

RECEIPTS			DISBURSEMENTS		
1. Cash on hand at beginning of period,		00	1. Paid depositors,		00
2. Collected on loans and discounts,	60 183	92	2. Paid to Reserve for tax accounts	3 797	20
3. Collected from charged-off assets, U. S. & Miscellaneous Bonds	57 625	25	3. Paid to Rediscounts & Miscel. Liab.	218 135	38
4. Collected from [illegible]					

REPORT OF LIQUIDATING [illegible] **of The** [illegible] **National Bank of** [illegible]

for the Period ended December 31, 1933

ASSETS	On hand beginning of period	Collections during period	Losses on assets compromised, sold, or charged off during period	Increase in assets from property purchased, exchanged, or from charged off items restored to the banks during period	Balance on hand end of period
1. Loans and discounts,	940,550.37	60,183.92	29,345.51	427,594.03	1,2[illegible]
2. Overdrafts,	00				
3. U.S. bonds to secure circulation,	1,000,000.00	997,625.00	2,375.00		00
4. Other U.S. bonds,	00				00
5. Premium on U.S. bonds,	00				00
6. Bonds, securities, etc., including premium on same,	95,332.73	13,956.65			81[illegible]
7. Gold coin [illegible]	30,000.00	30,000.00			00
8. Banking house furniture and fixtures,	507,000.00	150,000.00	357,000.00		00
9. Other real estate owned,	34,335.64	3,903.31	10,516.05	[illegible]	11[illegible]
10. Due from Federal Reserve bank,	00				00
11. Due from national banks,	261.43	261.43			00
12. Due from State banks and bankers,	1,031.04	1,031.04			00
13. Checks and other cash items,	2,229.81	1,065.97			1,163.84
14. Total cash on hand,	00				00
15. Five percent redemption fund,	00				00
16. Due from U.S. Treasurer,	00				00
17. Collected from interest,	00	65,569.62			00
18. Collected from rents,	00	3,941.43			00
19. Collected from charged-off assets,		57,625.25			00
Res. for taxes charged [illegible]					
Totals,	2,610,741.02	1,259,027.32	399,236.56	527,884.72	1,480,561.86

LIABILITIES	Amounts due beginning of period	Liabilities paid during period	Increase in undivided profits from rents, interest, or collected from charged off assets	Reduction in capital stock, surplus, or undivided profits from losses on assets compromised, sold, or charged off, and expenses paid during period	Balance due period ended
1. Capital stock paid in,	1,000,000.00				1,000,000.00
2. Surplus fund,	00				00
3. Undivided profits,	(8[illegible])		127,136.30	442,672.96)	[illegible]
4. Reserved for taxes, etc.,	20,000.00	3,797.20			00
5. Circulation account,	1,000,000.00	1,000,000.00			00
6. Due to Federal Reserve bank,	00				00
7. Due to national banks,	00				00
8. Due to State banks and bankers,	00				00
9. Individual deposits,	00				00
10. Savings deposits,	00				00
11. Cashiers' and certified checks,	00				00
12. Certificates of deposit,	00				00
13. U.S. deposits,	00				00
14. Postal savings deposits,	00				00
15. Rediscounts with Federal Reserve bank,	00				00
16. Rediscounts and bills payable,	669,641.84	211,[illegible]			865,596.54
17. Liabilities other than those above stated,	10,144.36	6,800.00			3,344.36
B/P due CNB in ¥		(397,594.03)			
O/D due CNB in ¥		(2,696.05)			
Totals,	2,610,741.02	814,642.20	127,136.30	442,672.96	1,480,561.86

Total liquidating dividends paid to date, $ ..... percent

RECEIPTS AND DISBURSEMENTS FOR PERIOD ENDED DECEMBER 31, 193

RECEIPTS		
1. Cash on hand at beginning of period,		00
2. Collected on loans and discounts,	60 183	92
3. Collected from charged-off assets,	57 625	25
4. Collected from U. S. & Miscellaneous Bonds Federal Reserve Stock	1 041 581	65
5. Collected from Banking House, Fixtures & Real Estate	153 903	31
6. Collected from Banks & Cash Items	2 358	44
7. Collected from Interest	65 569	62
8. Collected from Rents	3 941	43
Totals	1 385 163	62

DISBURSEMENTS		
1. Paid depositors,		00
2. Paid to Reserve for tax accounts	3 797	20
3. Paid to Rediscounts & Miscel. Liab.	218 135	38
4. Paid to Circulation	1 000 000	00
5. Paid [illegible] Expense	43 436	40
Percent dividend on capital stock,		
Percent dividend on capital stock,		
5. Paid on acquired Assets	119 794	64
Totals	1 385 163	62

I certify the above to be correct.

Dated May 1934, 1934

[signature]

Liquidating Agent

478 The Witness:

There was no other report in writing made to the banking department, between the last two reports that I have offered in evidence.

I just went over the affairs with the National Bank Examiner locally, and with the chief bank examiner, we went to see him. He lives in Dallas, Texas. We made no report to him at all. The next report of the liquidating agent was December 31, 1934, and the next one was December 31, 1935.

Mr. Rogers:

We offer these two instruments in evidence.

(Marked "Defendant's Exhibit 6 & 7" as follows:)

EE 6

REPORT OF LIQUIDATING [illegible] of The [illegible] National Bank of [illegible] located at [illegible]

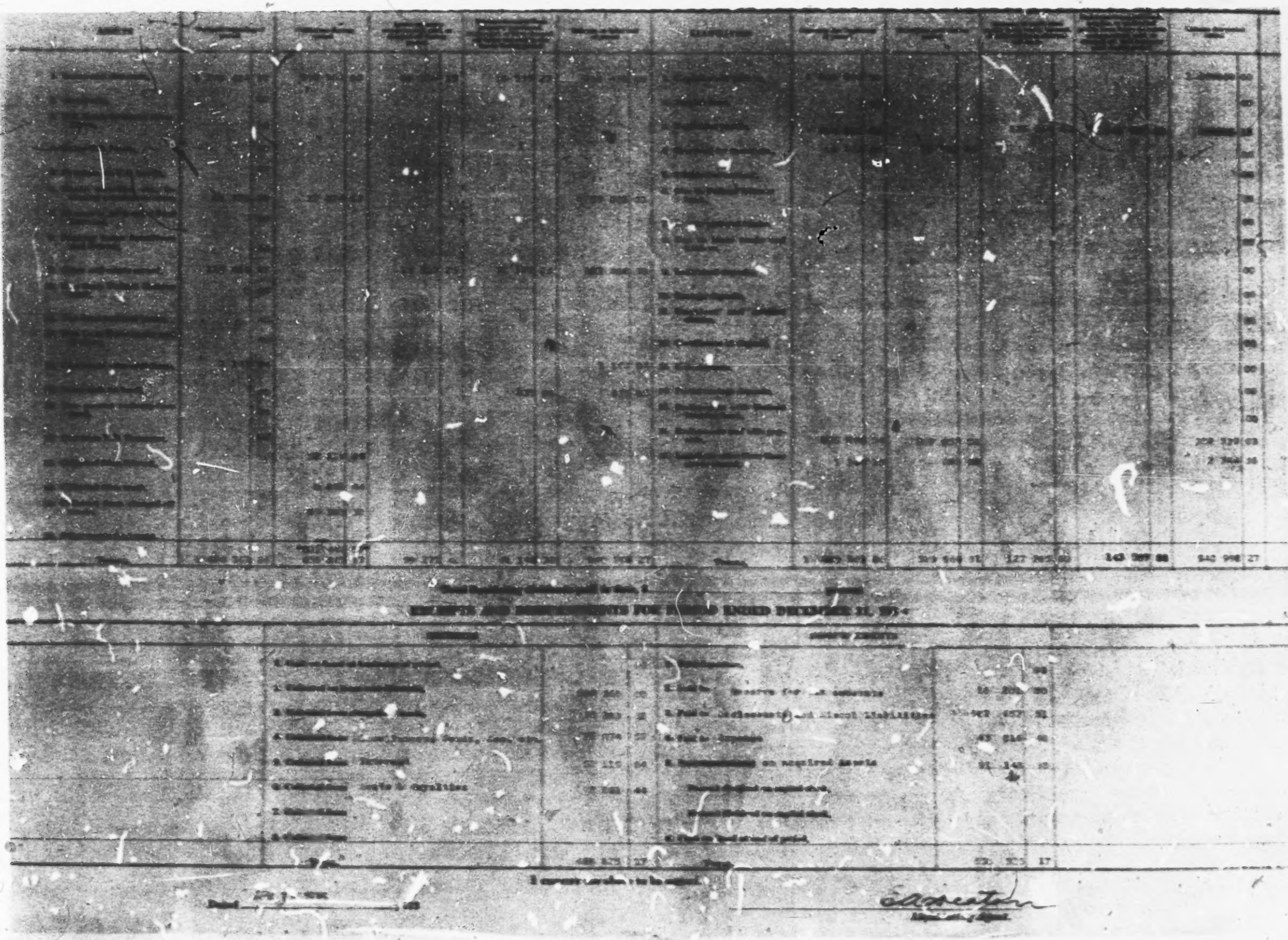
for the Period ended December 31, 19[illegible]

ASSETS	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	LIABILITIES	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
1. [illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	1. [illegible]	[illegible]				1,[illegible] 00
2. [illegible]	00					2. [illegible]	00				00
3. [illegible]	00					3. [illegible]	[illegible]		[illegible]	[illegible]	[illegible]
4. [illegible]	00					4. [illegible]	[illegible]				00
5. [illegible]	00					5. [illegible]					00
6. [illegible]	[illegible]	[illegible]			[illegible]	6. [illegible]					00
7. [illegible]	00					7. [illegible]					00
8. [illegible]	00					8. [illegible]					00
9. [illegible]	[illegible]		[illegible]	[illegible]	[illegible]	9. [illegible]					00
10. [illegible]	00					10. [illegible]					00
11. [illegible]	00					11. [illegible]					00
12. [illegible]	00					12. [illegible]					00
13. [illegible]	[illegible]				[illegible]	13. [illegible]					00
14. [illegible]	00			[illegible]	[illegible]	14. [illegible]					00
15. [illegible]	00					15. [illegible]					00
16. [illegible]	00					16. [illegible]	[illegible]	[illegible]			356 539 03
17. [illegible]		[illegible]				17. [illegible]	[illegible]	[illegible]			2 746 36
18. [illegible]		[illegible]									
19. [illegible]		[illegible]									
20. [illegible]		[illegible]									
Totals	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	Totals	[illegible]	[illegible]	[illegible]	[illegible]	940 998 27

Total Depositing [illegible] to date, $ [illegible]

RECEIPTS AND DISBURSEMENTS FOR PERIOD ENDED DECEMBER 31, 19[illegible]

RECEIPTS		DISBURSEMENTS	
1. [illegible]	[illegible]	1. [illegible]	[illegible]
2. [illegible]	[illegible]	2. [illegible] Reserve for tax accounts	[illegible]
3. [illegible]	[illegible]	3. [illegible] Bill-counts and Bloom Liabilities	[illegible]
4. [illegible] Classified and Bonds, [illegible], etc.	[illegible]	4. [illegible] Expense	[illegible]
5. [illegible] Interest	[illegible]	5. [illegible] on acquired assets	[illegible]



445

Dec 27

REPORT OF LIQUIDATING [illegible] of The [illegible] National Bank of [illegible], [illegible]

For the Period ended December 31, 19[illegible]

Assets						Liabilities					
1. Loans and discounts	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	1. Capital stock	[illegible]				
2. Overdrafts						2. Surplus					
3. U. S. bonds						3. Undivided profits	[illegible]				
4. Premiums on U. S. bonds						4. Amount due to banks, etc.					
5. Bonds, securities, etc., other than bonds pledged as collateral	10961 35	21404 97	30387 03		7912 65	5. Due to National Banks					
6. Bonds pledged as collateral for circulation						6. Due to State banks and bankers					
7. Banking house (including vault)						7. Due to other than banks and bankers					
8.											
9. Due from National Banks (not reserve agents)	371446 98	7341 34	48996 30	3421 08	111813 42	8. Individual deposits subject to check					
10. Due from approved reserve agents						9. Demand certificates of deposit					
11. Due from State Banks and Bankers	435 45			3334 53	3769 98	10. Certified checks					
						11. Cashier's checks outstanding					
12.						12.					
13. Checks and other cash items	3303 94		3303 94			13. U. S. deposits					
14. Total cash on hand						14. Deposits of U. S. disbursing officers					
15. Due from Federal Reserve Bank—5% Redemption Fund						15. Deposits of United States Treasurer (postal savings)					
16. Outlawed from Circulation		88295 00				16. Reserve with legal depositaries	358 1884 08	99 7794 50			3958 0678 58
17. Outlawed from Redemption		2104 50				17. Dividends unpaid	0 [illegible]				0 [illegible] 50
18. Outlawed from Circulation Account of Banks		87549 50									
19. Other assets (not incl.											
Totals	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	Totals	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

Total Liabilities (Deduct call in Item 8) [illegible]

[illegible]

REPORT OF LIQUIDATING AGENT of The ... for the Business Day of ... for the Period ending December 31, 19..

ASSETS											
1. Cash on hand											
2. Deposits											
3. U. S. bonds											
4. Pledged as U. S. bonds											
5. Stocks, securities, etc., for trading purposes (not pledged)	59261 31	21404 67	30382 62		7525 65						
6. Stocks and bonds of agents of closed banks, etc.											
7. Stocks, bonds, investments and securities											
8. Other real estate owned	171496 00	7352 54	44098 10	1811 00	171896 40						
9. Due from National, State and private banks											
10. Exchanges for clearing house	420 00			1700 63	1700 63						
11. Due from other banks and bankers											
12. Checks and other cash items	2122 94		3103 84								
13. Total cash on hand											
14. Due from Federal Deposit Insurance Corporation											
15. Collateral loans (detail)		66270 00									
16. Collateral loans (real)		7500 00									
17. Collateral loans (personal and other)		237469 00									
18. Other assets (not cash)											
Totals	232700 27	339976 21	107047 23	67250 23	7 [illegible] 29						

Total liabilities (deposits paid or [illegible] ... [illegible]

RECEIPTS AND DISBURSEMENTS FOR PERIOD COVERED BY THIS REPORT

RECEIPTS		DISBURSEMENTS	
1. Balance on hand (last report)		1. Salaries	
2. Deposits		2. Rent	
3. Collected on loans		3. Taxes	
4. Collected on bonds		4. Insurance	
5. Collected on stocks		5. Other expenses	
6. Collected on other assets		6. Dividends	
7. Interest and discount		7. Interest	
8. Collected from other sources		8. Other disbursements	
Totals		Totals	

481 The Witness:

Our 1936 report has not been made.

The bank's deposits in June, 1929 were $8,063,069.30. In 1924, our deposits ran, in round figures, $10,000,000.00. In the four calls in 1925, exceeded ten million dollars. In 1926, in the first call, in 1927, all exceeded $10,000.00. The first two calls in 1927 were nine million dollars plus. The last call in 1927 was ten million dollars plus. The first call in 1928 was nine million, nine hundred and eighty-three thousand dollars. The second call in 1928 was $10,000,000.00 plus. The next three calls were nine million dollars plus, and in 1929 the first call was $9,700,000.00, the second call was $8,000,000.00, the third call was $7,000,000.00, the fourth call was $8,600,000.00. In 1930 the first call was $8,000,000.00, the second call was $9,800,000.00, the third call was $6,742,000.00, the fourth call was $6,736,000.00. In 1931 the first call was $5,853,000.00, the second call $4,891,000.00, the third call $4,190,000.00. The first call in 1932, $3,370,000.00; the second call $3,474,000.00, the third call $3,921,000.00. The first call in 1933, $2,864,000.00, and in October of that year, $3,000,000.00. The last call in 1932 was the old bank, $3,921,000.00.

We had to charge off paper from time to time and that was not included in our report. There was a continuous withdrawal of funds from our bank after the financial break in 1929, until we organized the new bank. At that time there was a great deal of fear in this community in respect to the solvency of banks, and in conference with the directors, I, as one of the di-

482 rectors, considered that it would be impossible to reopen the old bank after this holiday, would prove disastrous. It considered that it would be impossible to keep that bank open and meet the demands that the public would make upon it. We then determined that the best thing to do would be to liquidate voluntarily the old bank and incorporate a new bank, which we did. In October, 1931, we determined that it would be imperative to put new money into the bank, which was a contribution to cash and not to capital.

I have the original books and records of the old bank before me, from which I can testify as to cash on hand. There was money borrowed from the bank. The assets of the bank sold under the repurchase agreement which were the obligations of the bank, plus the guarantee or underwriting of the directors and principal stockholders. Before I would feel justified in making an answer as to all of these transactions, I would have to investigate the records more thoroughly, if you want a specific date, I can get that for you. I will say that I, as a director and stockholder, did not join the other directors and stockholders in obtaining money from any other banks for the purpose of placing it at the disposal of the old bank. There was never a deposit made by the owners of this bank, or the old bank, for the benefit of furnishing it cash—what I am trying to get at—there was never any contributions by persons to the cash situation, except in an indirect manner, which was the underwriting.

I did join with the directors and other individuals
483 in borrowing money for the bank—that is, I underwrote the bank's obligations. As to the transaction with the First National Bank of this City, I will state that the City National Bank sold to certain individuals certain assets of this bank which were bills receivable of this bank, I can get that date for you later. I can get for you the transaction with the First National Bank of Wichita Falls, First National Bank in Dallas, and the Federal Reserve Bank, and will do so during the taking of this testimony.

The Marlborough note, which has been introduced in evidence here, was a renewal of the pre-existing indebtedness on the Marlborough Addition. I was an indorser on that note, as was G. W. Peckham, and throughout his litetime he continued as such.

I have the checks here showing all payments that I made, as a contributing partner to the liabilities of, or into the account of that partnership from its purchase to date, of the Marlborough Addition or the Texas Investment Company. I will give you such as I have,

September 22, 1925, check to Highland Irrigation Company, $3,869.25. That was cash payment on fifty-one acres of land, the check was paid September 26, 1925. The next is November 20, 1925, $250.00, payable to George Peckham, and the memoranda says, "Expense funds, Kemp and others Addition." That was paid November 21, 1925. The next is January 11, 1926, check payable to Highland Irrigation Company, $454.50; the memorandum says cash consideration one-fourth interest Highland lots. That is paid on January 12, 1926. The next one, February 1, 1926, $150.00, payable to the
484 Marlborough Addition assessment for expenses paid on February 4, 1926. May 8, 1926, $3,750.00, payable to Marlborough Addition, paid on May 10, 1926. May 19, 1926, $2,000.00, payable to Marlborough Addition, memorandum, "Assessments for improvements" paid on May 19, 1926. July 23, 1926, $3,000.00, payable to the Marlborough Addition, paid June 1, 1926. October 14, 1926, $4,797.87, payable to the Highland Irrigation Company, paid October 19, 1926. Totaling for my one-fourth, $18,271.62. I have paid no other amounts, than above mentioned, to my knowledge, upon the debts of the Texas Investment Company or the Marlborough Addition, or to its account, or for its benefit. The Marlborough partnership, or the corporation, Texas Investment Company, never paid back to me any sum of money of anv kind or character. I have not paid my part of the Texas Investment Company note.

I have before me the liability ledger of the Texas Investment Company. The date of the last entry is February 2, 1931, appears to be the renewal of a note, $21,500.00. Credit was applied upon that account for the sale of securities, December 29, 1930.

There has never been a new note made after June 29, 1930, to my knowledge; I have not indorsed or signed a note since that time. So far as the liability of the corporation now stands, it is upon that note. I have been liable upon that note ever since 1930, and long
485 prior thereto, and have not paid any part of it since the making of this last note. I listed that

note upon my statement to the banking department, as a liability of a director of the bank—it is included in the indirect liabilities—that item is classed against me.

The old and the new bank entered into a written contract in March or June, 1933, and copies of that contract are attached to the pleadings. There has never been a modification, or a change of any kind, or an extension of any character made between the two banks in respect to that contract since its making. The rights of the two banks, then and now, are reflected by the terms of that original agreement, except as the parties have dealt with each other under its terms.

Mr. Peckham and I were good friends. I considered him a good business man. In the fall of 1925, Mr. Peckham and I became associated in developing the Marlborough Addition; immediately before or after, I don't remember which, we had several trades whereby we were associated in business.

This Marlborough Addition which we started in the fall of 1925, was a tract of land adjacent to the City of Wichita Falls, and the four of us acquired it for the purpose of developing it as a residential addition to the city, sub-dividing it and paving it, and laying sewers, lighting, etc., and to participate, as our interests appear, in whatever net profit the thing might make. Having bought it in 1925, we platted it as an addition
and filed the plat of record, and begun its subdi-
486 vision and improvement with the view of sell-
ing off the lots.

In November, 1925, Mr. Basham, my fellow banker, and myself, owned what is generally known as the Stephens Royalty, and in November, 1925, I think it was, we sold Mr. Peckham an interest in that royalty. We took cash and notes for that interest.

Then in December, we bought what is known as the Curlee tract, it was forty acres adjacent to the City of Wichita Falls, on the south, the Holiday tract in the Taylor Addition. I had an undivided one-half interest, and Mr. Peckham had the other half. Mr. Basham

did not have any interest in that tract. The date of the deed, to that tract, is January 8, 1926. I think prior to that date we had a contract with reference to the purchase of that tract, subject to title, that contract was probably dated thirty days before January 8, 1926. I have here the deposit that went to Mr. Curlee's account, which is made up of J. T. Harrell's check, and Mr. Peckham's check, a total of $4,749.10, cash consideration. I do not have here the amount I paid. The date of the deposit slip to Mr. Curlee's account is January 9, 1926.

As I have stated, in the early days here people were making lots of money and large deposits, but they became somewhat more conservative at a later date, they were more conservative in 1925-26, than they were in 1919-20, and I think the bankers were watching loans a little more closely than they were watching them during the flush period. I have had many a customer of the bank talk to me about an investment, however,
487 it is not necessarily true that the closer the relationship between the banker and the customer and the confidence you have in him, the better acquainted you are with the individual and the confidence you have in him, the less you question his acts.

I usually waited on Mr. Peckham in the application of loans, the loans were passed upon by the Board of Directors or discount committee. Mr. Peckham was an active trader.

I have asked customers of the bank when they would make an application for a loan, what they intended to do with the money. I never asked George Peckham that, that I recall, I might have. I don't know whether he would have told me or not. Mr. Peckham never refused to answer any question I asked him about his business. I might have asked him some questions about his business.

I don't recall who conducted the negotiations for the sale of the first interest in the Stephens Royalty, we were not really offered the property for sale. Then

we were later approached by him for the purchase of the remaining interests that we owned. I could not state when the negotiations first begun, it was concluded as of January 1, 1926, and I suppose the negotiations begun a short time before that. The date of the second conveyance is January 1, 1926, it was concluded and acknowledged on the 28th of January, 1926. I do not know when the first payment was made, the delivery of the deed was in the interim.

Mr. Rogers:
We offer the instrument in evidence.

(Marked "Defendant's Exhibit 8" as follows:)

488 DEFENDANT'S EXHIBIT 8.

Mineral deed dated January 18, 1926. J. T. Harrell and C. E. Basham, grantors, Wichita Royalty Company grantee. Consideration $10.00 and other valuable considerations.

Conveying an undivided 1/4 interest in and to 1/8 part of all of the oil and gas produced and saved from the south 40 acres of the North 60 acres of the West 1/2 of the Northeast 1/4 of Section 83, Block 14, H & T C R R Company, Survey, in Wilbarger County, Texas, the same being an undivided 1/4 of the 1/8 overriding royalty reserved in the assignments as above referred to by Daniel Bond, and is to be delivered free of costs in the pipe line to the grantee, their successors or assigns; it being the intention of the grantors herein to each assign to Wichita Royalty Company, an undivided 1/8 interest in and to the 1/8 overriding royalty as above described, thereby conveying unto the said grantee an undivided 1/4 interest in and to the 1/8 overriding royalty as above described.

To Have and to Hold Unto the said Wichita Royalty Company, their successors and assigns, an undivided 1/4 interest in and to the 1/8 overriding royalty in and to the above described land, together with all and singular the, rights and appurtenances in anywise belonging thereto.

Acknowledged January 28, 1926.

Filed for record February 4, 1926.

Recorded in Volume 103 page 273, Deed Records Wilbarger Co.

489 Bearing $26.00 in documentary stamps.

The Witness:

On the date of that deed, I did not know how much Peckham and I owed upon the indebtedness incurred in the Marlborough transaction, the deferred payments due the Highland Irrigation Company, but I can get that information for you. I have before me a copy of a deed, September 19, 1925, Highland Irrigation Company, J. A. Kemp and others, which includes W. H. Peckham, G. W. Peckham, J. T. Harrell, which reflects six notes of $7,-738.30 each, totaling $46,429.80, which was owed by the four of us. The second deed, dated January 8, 1926, deed from the Highland Irrigation Company to J. A. Kemp and others. W. H. Peckham, G. W. Peckham, J. T. Harrell, six outstanding notes, $909.00 each, a total of $5,-454.00 making a total owed by the four of us as of that date, $51,883.80, as reflected by those deeds.

Regardless of the total amount, I will say that Mr. Peckham, along with W. H. Peckham, and Mr. Kemp, and myself, were generally obligated upon a substantial sum of money due the Highland Irrigation Company.

According to the liability ledger of the City National Bank of Wichita Falls, on January 1, 1926, George Peckham owed the bank $28,050.00. He owed Mr. Basham

and myself $5,000.00 upon notes executed for his purchase of the first interest in the Stephens Royalty; that $5,000.00 indebtedness was evidenced by a note which he gave me when he first bought that, and had a little accrued interest on it. On that date I owed the bank $7,500.00, which was increased on January 11, to $10,560.00, and on January 19, the $15,574.44.

490 The consideration for the mineral interest conveyed to the Wichita Royalty Company as shown by Plaintiff's Exhibit 8, was $22,207.00 in cash and notes, and the conveyance of G. W. Peckham's interest in the forty acre tract known as the Curlee tract. $4,749.10 was the amount of cash that Mr. Peckham and I paid Walter Curlee and some notes for the Curlee tract; one-half of that cash was supposed to be paid by me and one-half by Mr. Peckham. In trading with Mr. Peckham for the sale of this interest, described in the deed to the royalty company, the memorandum would indicate that we paid $3,567.75 for it. I testified upon the original trial of this case in the state Court, and if the records show, I probably testified that I took that property in for approximately twenty-four hundred dollars, that was the information furnished me by Mr. Duncan, he kept my record. The deed from Curlee to Peckham, dated January 8, 1926, and filed for record 1-11-26, reflect a consideration of $7,628.00. The Wichita Royalty Company did not owe the bank any money on January 1, 1926. As reflected by the ledger sheet, Mr. Peckham's beginning balance as of January 4, 1926, was $878.70. A copy of the deposit ticket reflects that G. W. Peckham's account was credited with five thousand dollars, January 4, 1926.

I handled the negotiations on the part of the bank, and Mr. Peckham on the part of the Wichita Royalty Company, which show January 18, 1926, $15,000.00, and on March 1, 1926, $25,000.00; those are the originals out of which the personal note of $22,000.00 arose.

491 I don't know whether George Peckham indorsed those obligations or not, the record will show.

The records kept at that time did not generally reflect the indorsers, the system changed and began to reflect the indorsers July 15, 1927. When the record did begin to show the indorsements of Mr. Peckham, he appeared as the indorser on this obligation. I don't remember whether I testified in the other trial that Mr. Peckham was an original indorser, or not. I considered Mr. Peckham personally liable upon the obligations at all times, because of a membership in the joint stock association. I would state that I do not have any independent recollection of these transactions, except what the books and records reflect. I have delegated an employee of the bank to inquire into and work up the information as disclosed by the books and records of the bank, as to the transactions involved in this controversy, both with respect to my personal affairs and of the bank, and the other parties mentioned in the litigation. That person is Mr. H. H. Carson, and he could answer these questions better than I can.

Re-Direct Examination.

By Mr. Boone:

I have had to refer to the records in order to answer these questions of Mr. Rogers with reference to different transactions involved herein; during this time I was employed in looking after the general affairs of the bank, and not the details. I was interrogated
492 concerning some figures beginning in 1929, in 1923, and on down to the organization of the new bank, those figures show in general the aggregate total deposits on certain dates of the call by the comptroller of the currency, in published statements. This statement here reflects the fluctuations in the deposits on the call dates as shown in that first column.

Mr. Boone:

We offer in evidence the tabulation of deposits, as shown, which reflect the deposits of the City National

Bank from the call of 3-4-19, down to the organization of the new bank. Only offering down to 12-31-32. This being the deposits of the old bank and being the first column on the page.

(Instrument marked "Defendant's Exhibit 17" and reading as follows:)

493 DEFENDANT'S EXHIBIT 17.

Deposits of City National Bank at Various Calls for Published Statements by the Comptroller of the Currency.

3- 4-19	$ 7,625,913.21
6-30-19	10,363,039.95
9-12-19	12,417,268.12
11-17-19	14,140,857.76
12-31-19	14,126,451.76
2-28-20	13,735,071.89
5- 4-20	19,233,885.87
6-30-20	18,785,003.98
9- 8-20	16,608,149.27
494 11-15-20	14,230,059.48
12-29-20	14,476,799.01
2-21-21	11,884,454.08
4-28-21	9,868,781.13
6-30-21	8,504,910.22
9- 6-21	7,645,450.94
12-31-21	8,246,688.97
3-10-22	8,628,921.35
6-30-22	8,510,095.79
9-15-22	8,404,614.36
12-29-22	8,227,630.28
4- 3-23	7,722,280.97
6-30-23	6,842,685.89
12-31-23	7,659,346.62
3-31-24	7,042,032.87

	6-30-24	6,816,485.06
	10-10-24	6,693,161.23
	12-31-24	10,876,374.17
	4- 6-25	10,327,305.29
	6-30-25	10,833,900.94
	9-28-25	10,014,284.31
	12-31-25	10,891,523.81
	4-12-26	10,962,329.02
	6-30-26	10,683,926.48
	12-31-26	10,406,186.27
495	4-23-27	10,546,974.09
	6-30-27	9,297,565.80
	10-10-27	9,453,931.98
	12-31-27	10,267,068.42
	2-28-28	9,983,004.84
	6-30-28	10,162,557.57
	10- 3-28	9,118,601.78
	12-31-28	9,968,532.10
	3-27-29	9,701,171.33
	6-29-29	8,063,700.09
	10- 4-29	7,006,104.65
	12-31-29	8,674,374.87
	3-27-30	8,082,425.19
	6-30-30	9,858,542.45
	9-24-30	6,742,053.95
	12-31-30	6,737,057.74
	3-25-31	6,148,634.87
	6-30-31	5,853,730.74
	9-29-31	4,891,033.39
	12-31-31	4,190,195.85
	6-30-32	3,370,201.25
	9-30-32	3,474,448.25
	12-31-32	3,921,134.24

496 The Witness:

This column of deposits reflects the time we would survive certain depressions and then come back up. When we organized the new bank, in the time of the moratorium, March, 1933, publicity was given to the or-

ganization, it was advertised quite freely in the papers. We published notice in the daily papers of Wichita Falls, that the old bank was going into liquidation, also notices of the organization of the new bank. It was talked on the streets of Wichita Falls with reference to the liquidation of the old bank and organization of the new bank.

George Peckham died, I believe it was November 7, 1929, and at that time the Marlborough Addition appeared to be a good business investment. Before George Peckham's death, we had expended large sums of money toward developing the Marlborough Addition, improvements such as paving, sewer, water, lights and public utilities.

Upon the death of Mr. Peckham, I discussed with Mr. Scannell and found out that the Wichita Royalty Company was claiming to own all of Mr. Peckham's interests in the Marlborough Addition. At that time he gave me that information, I thought the Marlborough Addition was a substantial investment.

The call of December 31, 1929, shows our bank deposits to be $8,674,374.87; the next call, March 27, 1930, $8,082,000.00; the next call, June 30, 1930, $9,858,000.00; in other words, the amount deposited during that time had begun to climb up to another peak, and
497 then began to drop from that date on.

As to the loans I made to George Peckham, of Wichita Royalty Company, January, 1926 and March 1, 1926, one for $15,000.00 and one for $25,000.00, I will say that my relationship with George Peckham was such that it did not lead me to believe that I ought to investigate what he was going to do with the money, because he had always made an accounting for his obligations to the City National Bank.

Prior to 1927, I was what was known as the active vice-president of the bank, and had been for three or four years prior. Since I have been connected with the bank, I have never had anything to do with checking over the transfer of deposits from one account to

another. During these times we had from six to twelve tellers in the bank. We had one hundred and ten employees at the peak. We had as many as twenty or fifteen or ten, as business changed. Always at least ten men back there until recent years, and we have gone along with less. Up until the organization of the new bank, we have had approximately fifteen bookkeepers and tellers, as well as other stenographers who worked in the bank. I never had any occasion at any time to check over the depositors in that bank, transferring from one fund to another. During that time we had approximately five to seven thousand depositors and customers of the bank. I did not look over or check into the respective depositors. People like George Peckham, I did not take occasion to examine his account and examine the respective withdrawals and de-
498 posits therein, nor did I do so with the Wichita Royalty Company. It is the practice of the bank to send monthly statements at the close of each month. The work is done by the bookkeepers, and other employees lower than officers. That system was followed with George Peckham and the Wichita Royalty Company, and they received their canceled checks each month.

Mr. Boone:

The defendants offer in evidence the $15,000.00 and $25,000.00 deposit slips.

499 (Instruments marked "Defendant's Exhibit 9" and "Defendant's Exhibit 10" and reading as follows:)

DEFENDANT'S EXHIBIT 9

City National Bank

Deposited by
Wichita Royalty Co.

Wichita Falls, Texas 3-10-1936

Checks as follows:

Note $25,000.00

Original 49 Total $

DEFENDANT'S EXHIBIT 10

City National Bank

Deposited by
Wichita Royalty Co.

Wichita Falls, Texas 1-18-1936

500 Checks as follows:

Note 15,000.00

Wh (19)

Original 32 Total $

The Witness:

These are the two deposits, the proceeds of those loans, each of those went to the credit of the Wichita Royalty Company.

Re-Cross Examination.

By Mr. Rogers:

I know these statements were mailed, because it was the common practice. We think they received them, because some of them are in the files of the Wichita Royalty Company.

We had quite a few executives of the bank in 1925-26, authorized to loan money, I would say half a dozen. Generally each of these executives had certain customers who would come to them, whenever they wanted to borrow any money, and those executives would undertake to keep up with the credit rating of that individual. I keep up with the credit rating of a man from the manner in which he takes care of his obligations, the activities he has, and the transactions he carries on. I do not remember any of the assets Mr. Peckham had at the time he made this original loan. As a banking official I knew in a general way what his properties consisted
501 of. I might say, that the loans of $15,000.00 or $25,000.00, were always gone into by consultation with other officials of the bank, not necessarily what the proceeds of the loan were going to be used for,

we consulted about whether or not the note was collectable, from his past record. The purpose for which the proceeds are to be used does not bear upon the value of the note. It would not be necessary to know whether he is going to make a good or bad investment. Generally speaking, I would say that it is not necessary to inquire into what the money is going to be used for. I am sure I went into consultation with somebody about whether or not I should loan this $25,000.00 and this $15,000.00 in 1926, in all probability I consulted with the members of the discount committee. There was always a method of consultation on loans of any kind or size. I don't know when we begun to keep the minutes of the discount committee.

The banks were closed in March by presidential proclamation, and by acts of Congress, banks were permitted to open only by permission and with the approval of the banking department at Washington. All the banks opened on the same day, some of them under government supervision, and they all opened on that same day. There might have been a few exceptions, where a bank was under a conservator. There might have been some delay in opening a bank, making further investigation of the situation, but generally speaking, all banks that were chartered were granted permission to open of their own accord, on the same day. The three banks of Wichita Falls opened on the same day, they opened at nine o'clock in the morning.

502

I have before me the discount committee minute book, the date is January 2, 1926, this is the beginning of the year. I might answer another question you asked me, about the indorsement of George W. Peckham, the minutes reflect the indorsement of George W. Peckham for the $25,000.00, but does not reflect his indorsement for the $15,000.00, it might have been there and not reflected.

I do not know that Mr. Kemp deeded all of his assets to a trustee for the benefit of his creditors. He did not

make a deed to Mr. Kell, he might have with reference to certain items. I can show you a financial statement of Mr. Kemp, where he reflected a $5,000,000.00 net worth without any liability. I landed in Wichita Falls on November 11, 1919, to consider this proposition. When I came here the great excitement was about the KAMA field. Mr. Kemp organized a trust estate at that time for the benefit of his children.

Re-Direct Examination.

By Mr. Boone:

I have the records which reflect that during 1926 there was what was known as a discount committee, which passed upon loans above $15,000.00, and below. The discount committee minutes, January 20, 1926,
503 show present at the discount committee P. P. Langford, J. T. Harrell, W. L. Robertson, C. E. Basham, Oral Jones, and A. H. Britain. P. P. Langford was president of the bank, I was vice-president, W. L. Robertson second vice-president, C. E. Basham the next vice-president, Mr. Jones vice-president and cashier, and A. H. Britain was an outside director. The records indicate that the first loan to the Wichita Royalty Company of $15,000.00, due ninety days, was passed upon by that committee. The minutes are signed officially by P. P. Langford, President, and Oral Jones, Secretary. The statement there opposite the fifteen thousand dollars, would indicate eight percent interest was charged.

The minutes, of March 23, 1926, show present, P. P. Langford, President, J. T. Harrell, Vice-President, W. L. Robertson, Vice-President, Oral Jones, Vice-President and Cashier. At that time the loan to Wichita Royalty Company was passed upon by the discount committee, $25,000.00 for ninety days, indorsed by G. W. Peckham. The interest rate is eight percent. The note drew interest from date, the note was for $25,500.00, and we had a method of interest from date, writing up the amount

of interest, and adding it to it. The record is certified to. This record contains the following, "All loans made and reviewed Monday and those paid, as well as partially so, and those maturing and not having attention, those maturing ten days hence were all carefully gone over." This was approved by the discount committee on March 3, 1926. That same recitation ap-
504 pears on the report of the discount committee on January 20. There is also this notation, January 18, "The following approved loans were made January 18, 1926." The credit went up as of January 19, the date of the approval of this loan.

Re-Cross Examination.

By Mr. Rogers:

The deposit slip of $25,000.00, exhibit 9, of the Defendant, shows a credit for the item March 1, 1926, it was made on the record on that date; they had passed upon the application as it came it, but it was during business hours, and it was the next day, as far as writing it up was concerned. I did take it up with the committee before the loan was made. This is the result of that transaction. This is the records of loans they approved, and the only record, that is the way it is done today.

Re-Direct Examination.

By Mr. Boone:

When a man came in and made an application I took it up with these respective officers as to whether they were to approve the loan, and they consented to it, and they ratified their consent by these meetings, as indicated by the minutes, that is, the next meeting we had.

505 Mr. Humphrey:

I wish to supplement the proof we started yesterday. I want to prove a lease of the royalties in Wheeler and Gray Counties.

H. H. CARSON, recalled, examined in chief by Mr. Humphrey, testified as follows:

I have a tabulation from the books and records of the Wichita Royalty Company as to what royalties they own in Wheeler, Gray, Archer and Young Counties. The deed of trust that has been offered in evidence does not recite specifically the royalties owned, but says all of the royalties owned by the Wichita Royalty Company in those four counties, and I have a detailed list. I got those from the actual conveyances that were made into the Royalty Company, and checked them with the various deeds from which the Royalty Company had received these royalties; from their records in their office.

Wheeler County grantee, Wichita Royalty Company, grantor, G. W. Peckham, dated 12-7-26, 2/256ths undivided mineral interest, recorded in Book 60, page 2, Deed Records of Wheeler County, Texas, conveying the Northeast quarter of section 47, block 24, H&GN Railway Company Survey. The next one, 2/512ths, mineral interest, page 60, Book 2, conveying the west half of the southeast quarter of section 43, block 24, H&GN Railway Company survey. The next one, 2/512ths,
506 mineral interest, recorded in book 60, page 1, and conveys the east half of section 54, block 24, H&GN Railway Company survey. The next instrument conveyed on 12-6-26, 2/256ths interest, recorded in book 6, page 3, and conveying the north half of section 45, block 24, H&GN Railway Company survey. The next instrument, 12-7-26, conveys 2/256ths mineral interest, recorded in book 60, page 2, east one-half of section 57, block 24 H&GN Railway Company survey.

Gray County, Grantee, Wichita Royalty Company, grantor, G. W. Peckham, dated 12-6-26, 1/32 mineral interest, recorded in Book 32, page 300, and conveying 120 acres out of Section 59, block 25, H&GN Railway Company survey. It is one-fourth of the oil and gas and minerals instead of 1/32 interest.

Mr. Humphrey:
We offer the deed in evidence.

(Marked "PLAINTIFF'S EXHIBIT 31," as follows:)

Grantor, G. W. Peckham; Grantee, Wichita Royalty Company; consideration $10.00 cash in hand paid by Wichita Royalty Company conveying one-fourth interest in and to all of the oil and gas and other minerals in and under, and that may be produced from the following described land in Gray County, Texas, to-wit:

The west half of the southeast quarter, and the northeast quarter of the Southeast quarter, of Section number fifty-nine (59) in block number twenty-five (25) H&GN Ry. Co. surveys, containing 120 acres of land, more or less.

Together with the right of ingress and egress
507 at all times for the purpose of mining, drilling and exploring said land for oil, gas and other minerals, and removing the same therefrom.

Dated December 6, 1926.

Duly acknowledged by George W. Peckham, before Lillian Ward, Notary Public in and for Wichita County, Texas, December 6, 1926.

Filed for record December 13, 1926 at 10-12 o'clock and recorded December 16, 1926, 1-10 o'clock A. M. in the Deed Records of said county, in volume 32, page 300.

The Witness:
On the same date, recorded in book 32, page 300, and conveying 320 acres out of section 61, block 25 H&GN Ry. Co. survey.

Mr. Humphrey:
We offer the deed in evidence.

(Said instrument marked "Plaintiff's Exhibit No. 32" as follows:)

PLAINTIFF'S EXHIBIT 32

Mineral deed.

Granter, George Peckham; Grantee, Wichita Royalty Company. Consideration, $10.00 cash in hand paid by Wichita Royalty Company. Conveying 1/8 interest in and to all of the oil, gas and other minerals in and under, or that may be produced from the following described land situated in Gray County, Texas, to-wit:

The south half of section number sixty-one (61) in block number twenty-five (25) H & G N Ry.
508 Co. surveys, containing 320 acres of land, more or less. Together with the right of ingress and egress at all times for the purpose of mining, drilling and exploring said land for oil, gas and other minerals, and removing the same therefrom.

Duly acknowledged by George W. Peckham, before Lillian A. Ward, Notary Public in and for Wichita County, Texas, on December 6, 1926.

Filed for record December 13, 1926, at 10-11 o'clock A. M. and duly recorded December 16, 1926, at 9-55 o'clock A. M. in the Deed records of said county, in volume 32, on page 300.

Mr. Rogers:

Wichita Royalty Company objects to the foregoing deeds, and to any other deeds that might later be offered in evidence, from G. W. Peckham as an individual, to his trust, for the reason that there was a fiduciary relationship between Peckham and his trust, and he was incapacitated and without authority to deal in a dual capacity between himself as an individual and himself as trustee, fixing the price at the time of the conveyances, profiting personally in the transactions, conveying to the trust selected items of his own, of doubtful value; and the transactions themselves not being binding upon the trust, there being no showing of ratification or other

facts that would make the transactions binding upon the trust. This objection being made particularly with respect to all of the properties concerning which
509 the witness has testified, and may hereafter testify, without giving the names of the grantor, or without otherwise identifying the transaction in all of its details, and reserving the right later to inquire into and to disclose the real facts with respect to all of the transactions between G. W. Peckham as an individual and himself as trustee.

The Court:

You are raising the same fundamental questions of law that the Court is bound to agree with you on, but I have always conceived that it was the law that if a trustee acted as a good faith innocent—conduit, I believe I will use that word—for something in the trust for the benefit of the trust, with which, of course, the Court will be tremendously concerned and critical and scrutinize, I say that I conceive that to be the law, and if it is the law, then this objection might, with propriety, be overruled. I believe that is correct. The objections will be overruled, and the exceptions noted for the Wichita Royalty Company.

Mr. Rogers:

We desire an exception.

The Witness:

The next one was on 2-6, the grantor G. W. Peckham, recorded in book 32, page 299, and conveying one hundred and sixty-eight acres out of section 60, block 25, H&GN Ry. Co. survey. This is the deed.

Mr. Humphrey:

We offer the deed in evidence.

(Marked "Plaintiff's Exhibit 33" as follows:)

PLAINTIFF'S EXHIBIT 33

510 Grantor, G. W. Peckham. Grantee, Wichita Royalty Company, consideration $10.00 and other valuable considerations, cash in hand paid by Wichita Royalty Company. Conveying 1/64th interest in and to all of the gas and oil and other minerals in and under, and that may be produced from the following described land situated in Gray County, Texas, to-wit:

The northwest quarter of Section 60, in block 25, H & G N Ry. Co. surveys, containing 160 acres more or less.

Together with the right of ingress and egress at all times for the purpose of mining, drilling and exploring said land for oil, gas and other minerals, and removing the same therefrom.

Dated December 6, 1926.

Duly acknowledged by George W. Peckham, before Lilyan A. Ward, Notary Public in and for Wichita County, Texas, on December 6, 1926.

Filed for record, by the County Clerk of Gray County, December 13, 1926, at 10-18 o'clock A. M. and recorded December 16, 1926, at 9:45 o'clock A. M. in the deed records of Gray County, in Volume 32, page 299.

The Witness:

I also have here the deed to the Wheeler County property, that I have testified about.

Mr. Humphrey:

We offer those deeds in evidence.

(Marked "Plaintiff's Exhibits 34, 35, 36, 37 and 38, as follows:)

511 PLAINTIFF'S EXHIBIT 34.

Grantor, G. W. Peckham. Grantee, Wichita Royalty Company. Consideration, $10.00 cash in hand paid by Wichita Royalty Company, and other valuable considerations.

Conveying an undivided 1/128th interest in and to all of the gas, oil and other minerals in and under and that may be produced from the following described land situated in Wheeler County, Texas, to-wit:

Being all of the North-east one-fourth (1/4) of Section number 47, in block No. 24, H & G N Ry. Company survey, in Wheeler County, Texas.

Together with the right of ingress and egress at all times for the purpose of mining, drilling and exploring said land for oil, gas and other minerals and removing the same therefrom.

Dated December 7, 1926.

Duly acknowledged by G. W. Peckham, before Lilyan A. Ward, Notary Public in and for Wichita County, Texas, on December 7, 1926.

Filed for record December 13, 1926 at 11:00 A. M. and recorded in book 60, page 2, of the records of Wheeler County, Texas.

PLAINTIFF'S EXHIBIT 35.

Grantor, G. W. Peckham. Grantee, Wichita Royalty Company. Consideration $10.00 cash in hand paid by Wichita Royalty Company and other valuable considerations.

Conveying 1/256th interest in and to all of the oil and gas and other minerals in and under it, and
512 that may be produced from the following described land situated in Wheeler County, Texas, to-wit:

All of the west one-half of the southeast one fourth (Se 1/4) of section 43 in block 24, H & GN Ry. Co. Survey in said county, containing 80 acres of land, more or less.

Together with the right of ingress and egress at all times for the purpose of mining, drilling and exploring said land for oil, gas and other minerals, and removing the same therefrom.

Dated December 7, 1926.

Duly acknowledged by G. W. Peckham before Lilyan A. Ward, Notary Public in and for Wichita County, Texas, on December 7, 1926.

Filed for record December 13, 1926, at 11:00 A. M. and recorded in book 60, page 2 of the record of Wheeler County.

PLAINTIFF'S EXHIBIT 36.

Grantor, G. W. Peckham. Grantee, Wichita Royalty Company. Consideration, $10.00, cash in hand paid and other valuable consideration.

Conveying an undivided 1/256 interest in and to all of the gas, oil and other minerals, in and under, and that may be produced from the following described land situated in Wheeler County, Texas, to-wit:

All of the east one-half of Section 54, in block 24, H & G N Ry. Co. Survey, containing 320 acres of land more or less, together with the right of ingress
513 and egress at all times for the purpose of mining, drilling and exploring said land for oil,

gas and other minerals, and removing the same therefrom.

Dated December 7, 1926.

Duly acknowledged by G. W. Peckham before Lilyan A. Ward, Notary Public in and for Wichita County, Texas, on the 7th day of December, A. D. 1926.

Filed for record on December 13, 1926, at 11:00 o'clock A. M. and recorded in book 60, page 1, of the deed records of Wheeler County, Texas.

PLAINTIFF'S EXHIBIT 37.

Mineral Deed.

G. W. Peckham, Grantor. Wichita Royalty Company, Grantee. Consideration $10.00 cash in hand paid by Wichita Royalty Company. Conveying an undivided one-sixteenth interest to all of the oil and gas and other minerals in and under and that may be produced from the following described tract of land situated in Wheeler County, Texas, to-wit:

Being all of the North one-half of section number forty five in block 24, H & G N Ry. Co. Surveys, in Wheeler County, Texas.

Together with the right of ingress and egress at all times for the purpose of mining, drilling and exploring said land for oil, gas and other minerals, and removing the same therefrom.

514 Dated December 6, 1926.

Duly acknowledged by G. W. Peckham, before Lilyan A. Ward, Notary Public in and for Wichita County Texas, December 6, 1926.

Filed for record December 13, 1926, at 11 A. M. and duly recorded in book 60, page 3, of the deed records of Wheeler County, Texas.

PLAINTIFF'S EXHIBIT 38.

Mineral Deed.

Grantor, G. W. Peckham. Grantee, Wichita Royalty Company.

Consideration $10.00 cash in hand paid by Wichita Realty Company and other valuable consideration.

Conveying an undivided 1/16 interest in and to all of the oil and gas and other minerals in and under and that may be produced from the following described land situated in Wheeler County, Texas, to-wit:

All of the east half of section 57, in block 24, H & G N Ry. Co. Survey in Wheeler County, Texas, containing 320 acres of land more or less, together with the right of ingress and egress at all times for the purpose of mining, drilling and exploring said land for oil, gas and other minerals and removing the same therefrom.

Dated December 7, 1926.

Duly acknowledged by G. W. Peckham, before Lilyan A. Ward, Notary Public in and for Wichita County, Texas, December 7, 1926.

Filed for record December 13, 1926, at 11:00 A. M. and duly recorded in book 60, page 2 of the deed
515 records of Wheeler County, Texas.

The Witness:

The next properties are located in Archer County Texas.

I will state that these deeds that have been offered in evidence were found in the files of the Wichita Royalty Company, they were all executed and recorded in 1926.

The next property is in Archer County, Texas. Grantee, Wichita Realty Company, Grantor, G. W. Peckham, dated 7-20-25, interest conveyed, undivided 1/16 recorded in Book 105, page 495, conveying the north forty acres, block 21, Anderson Subdivision of South pasture.

Mr. Rogers:
At this time we wish our same objection as heretofore made with reference to these deeds.

The Court:
Same ruling.

The Witness:
The next item, 7-1-25, undivided 1/16 recorded in book 106, page 499, conveying the south thirty-two acres, block 21, south Anderson Ranch Land, and south sixty acres of west eighty acres, block 22, Anderson South Pasture subdivision, and north forty-five acres of east fifty acres of west one hundred acres, block 19, Anderson south pasture; and east sixty acres of west one-hundred and sixty acres, block 19, Anderson south pasture.

Mr. Rogers:
We wish our same objection.

The Court:
Same ruling.

The Witness:
The next property, grantee Wichita Royalty Company, grantor, B. L. Fain, dated February 20, 1925, undivided 1/64th interest recorded in book 99, page 47, and conveying one hundred acres out of block 1598, T&L Survey, Abstract 493.

516

Mr. Rogers:
Same objection.

The Court:
Same ruling.

The Witness:
The next one, Grantee Wichita Royalty Company, grantor B. L. Fain, dated 12-15-24, interest undivided 1/64th. Those undivided 1/64ths, that would be 1/8th of the 1/8th royalty. It is not 1/64th royalty interest conveyed, it is 1/8th of 1/8th royalty.

That is recorded in book 99, page 46, and conveying thirty acres out of block 1598, TP&L Co. survey, Abstract No. 493.

The next, Grantee, Wichita Royalty Company, Grantor F. O. Harrell, dated 12-16-24, conveying 1/128th, recorded in book 93, page 556, and conveying one hundred and twenty-five acres, block No. 46, Mead pasture subdivision of Thomas Survey, Abstract No. 458.

The next one is grantee Wichita Royalty Company, grantor Massie and Ray, dated 6-30-25, interest 1/16th mineral interest, or one-half of the royalty, which is 1/16th. Recorded in Book 108, page 173, and conveying one hundred and seventeen acres out of Isaac Holman League and Labor of land. All of this is in Archer County.

The next one, Grantee Wichita Royalty Company, Grantor G. W. Peckham, dated 4-22-24, conveying 1/64th royalty interest, which is 1/8th of 1/8. That
517 is an undivided 1/64th. Recorded in book 88, page 68, conveying lots 13 and 14, block 27, A. T. & N. C. lands.

Mr. Rogers:
Same objection.

The Court:
Same ruling.

The Witness:
The next one, grantee Wichita Royalty Company, grantor, B. L. Fain, dated October 9, 1925, conveying

1/64th interest in all of oil and gas and other minerals under said land, recorded in book 116, page 130, conveying the east half of section 4, BBB&C RR Survey, Certificate No. 692. That completes the list of the property in Archer County, Texas.

The property in Young county. Grantee Wichita Royalty Company, grantor G. F. Brown, dated 5-6-21, interest 3/64ths, recorded in book 90, page 613, and conveying forty acres out of block 4, Sarah Tankersley Survey.

The next property, Grantee Wichita Royalty Company, Grantor, W. A. Morris, dated 12-6-21, interest 1/16th of 1/8th, recorded in book 93, page 397, conveying eighty acres out of J. A. Harkness survey, abstract No. 1442.

The next property, Grantee Wichita Royalty Company, Grantor T. E. Matthews, dated 4-1-22, interest conveyed 1/8th of 1/8th, book 94, page 112, and conveying the south half of J. A. Harkness survey, abstract 1442.

The next property, Grantee Wichita Royalty Company, grantor B. L. Fain, dated June 6, 1922, conveying 1/8th of 1/8th, book 97, page 432, conveying eighty acres, B. L. Aynesworth Survey, B. R. I. R., 49, Ab-
518 stract 1948.

The next property, Grantee Wichita Royalty Company, Grantor, B. L. Fain, dated 6-20-21, royalty interest 5/8 of 1/8, book 93, page 268, forty acres out of block 4 of Sarah Tankersley Survey.

The next property, Grantee Wichita Royalty Company, by B. L. Fain, dated 3-28-22, 1/16 of 1/8, block 94, page 110, conveying forty acres of C. E. F. Auberg Survey, Abstract No. 1663.

The next one, Grantee Wichita Royalty Company, grantor T. L. Morgan, dated August 12, 1922, conveying 1/16 of 1/8 in book 97, page 97 and conveying forty acres of C. E. F. Auburg survey, 1663.

The next one, Grantee Wichita Royalty Company, Grantor J. M. Perkins, dated March 3, 1922, conveying 1/4 of 1/8, book 94, page 264, all of R. D. Owens survey, abstract No. 2245.

The next one, Grantee Wichita Royalty Company, Grantor T. E. Matthews, dated March 3, 1922, undivided 1/16 interest, book 94, page 265, south half of J. A. Harkness Survey, Abstract 1442.

The next one, Grantee Wichita Royalty Company, Grantor B. L. Fain, dated March 11, 1924, interest 1/4 of 1/8, book 102, page 162, one hundred and sixty acres out of R. D. Owens Survey, Abstract No. 2245.

The next one, Grantee Wichita Royalty Company, Grantor, A. W. Phillips, dated March 29, 1922, conveying 1/24 of 1/8 interest, book 94, page 113, north one hundred acres, T. J. Humphrey survey, Abstract No. 153.

The next one, Grantee Wichita Royalty Company, Grantor G. W. Peckham, dated March 12, 1923, undivided 3/16 interest in book 99, page 555, all
519 of B. R. I. R. No. 39, J. E. Dowdl Survey, Abstract No. 2215.

I have described some twenty five or thirty royalty interests in those four counties, conveying the mineral and royalty interest in several thousand acres of land, I found most of those records and instruments in the Wichita Royalty Company's books when I made my investigation. They had owned those properties since the time of this inquiry. Many of those properties are located in oil producing territories.

Here is a deed from the trustee, dated the 9th day of August, 1934, wherein Ray Bland, as trustee, for a consideration of $250.00, paid by Guy Rogers, as trustee under the will of L. B. Rogers, grants, sells and conveys unto Guy Rogers, by Guy Rogers, trustee under the will of L. B. Rogers, deceased, all and singularly the properties of the Wichita Royalty Company situated in the counties of Archer, Young, Gray and Wheeler, Texas. That is the property I have just described. I know enough about the royalties that I have just described, twenty-five or thirty, covering several thousand acres of land, to say whether or not the value of those properties was in excess of $250.00 on the 9th day of August, 1934, they were much in excess of that.

Cross Examination.

By Mr. Rogers:

I am the same Mr. Carson whom Mr. Harrell testified had been designated by the parties to this suit, Mr. Harrell, the bank and bank directors, and others,
520 to investigate, check, and analyze the books and records of the bank and of the individuals as to the facts involved in this controversy. I have spent many months doing that. I have thus become generally familiar with the books and records of the two banks and of Mr. Harrell. I have many of those original records available at this time, and such as I do not have are accessible to me. I have the pleadings filed by the Wichita Royalty Company, before me.

On January 1, 1926, Mr. Harrell owed the old bank $7,500.00; the indebtedness was increased on January 11, to $10,560.00, and again increased on January 19, to $15,574.44. On that date, G. W. Peckham owed the bank $28,050.00, and I cannot tell from these records whether they paid the discount or whether it was added to it, the liability ledger showed he owed at that time $28,050.00. On November 3, 1925, G. W. Peckham had executed a series of notes payable to J. T. Harrell and C. E. Basham for the unpaid purchase price, for the purchase of an interest in the Stephens Royalty. There was one of those notes remaining unpaid on January 1, 1926, in the principal sum of $5,000.00, on which interest since November 3, 1925 had accrued. The records indicate that at that time Mr. Harrell and Mr. Peckham were jointly liable, with others, to the Highland Irrigation Company, upon $51,885.00 worth of vendor lien notes, executed by them and others in their original purchase of the Marlborough Addition; that is, J. A. Kemp, G. W. Peckham, W. H. Peckham and J. T. Harrell, were the four who signed the vendor
521 lien notes.

I have the original deposit slips whereby the first payment on the sale by Mr. Harrell and Mr.

Basham, to Wichita Royalty Company, of an interest in the Stephens Royalty, were given to them by the bank. This one which I now hand you is the first deposit slip, that is, to Mr. Harrell. Here is the one to Mr. Basham.

When Mr. Harrell and Mr. Basham, in November, sold to G. W. Peckham an interest in the Stephens Royalty, the first payment by Peckham was made to them on November 12, 1925, the total amount of the payment was $15,000.00, one-half of it was deposited to Mr. Harrell's account and one-half to Mr. Basham's account. The deposit slip shows a notation, "undivided 1/64th interest in the south forty acres of Stephens Royalty sold to G. W. Peckham, effective 7:00 o'clock November 3, 1925. Cash paid $7,500.00." That is reading from Mr. Harrell's deposit slip. The balance of the notation reads, "G. W. Peckham's note for balance, $7,500.00 due in thirty, sixty and ninety days, eight percent interest, 11-3-25." The memo, "Notes for $5,000.00 each due thirty, sixty and ninety days payable to J. T. H. and C. E. B. held by C. E. B." "Delivered to C. E. B." means C. E. Basham. I have the deposit slips thereafter showing the payment by G. W. Peckham to these gentlemen of the unpaid purchase price of the first purchase, Stephens Royalty.

The next payment was on November 24, 1925, deposited to J. T. Harrell, $2,511.50, $11.50 was the interest
522 on his part of the $5,000.00 note. On the same day there was the same amount deposited to the account of C. E. Basham. The next payment to J. T. Harrell, November 27, 1925, for $2,513.00, the $13.00 being interest as deposit slip to C. E. Basham, for the same amount, on the same date. The next deposit was on February 2, 1926, to J. T. Harrell for $2,550.00, the $50.00 representing interest and on the same date there was a deposit for the same amount to C. E. Basham.

On the second sale to the Wichita Royalty Company, by Messrs. Harrell and Basham, the payments made as shown by the deposit slips to the sellers, were, on January 15, 1926, there was a deposit to Mr. Harrell for $1,100.60, and on the same day there was a deposit for

the same amount to C. E. Basham. On January 25, 1926, deposit to Mr. Harrell for $5,014.00, $14.00 representing interest. On the same date a deposit for the same amount to C. E. Basham. On March 6, 1926, deposit for $2,530.00 to Mr. Harrell. On the same date, a deposit to Mr. Basham, for the same amount. $30.00 represents interest. On March 31, 1926, there was a deposit to Mr. Harrell for $2.543.50, the $43.50 representing interest. On the same day a deposit of the same amount to Mr. Basham. I believe all of those deposit slips were made out in the handwriting of Mr. Harrell. The first one was handled by Mr. Basham, on the $7,500.00. Mr. Harrell handled all but the first. Those items were made by checks drawn by G. W. Peckham upon his personal deposit account with the
523 City National Bank.

I have access to and in my possession the deposit slips, canceled checks and return statements of accounts, which belong to G. W. Peckham, with the bank, that is, I have a part of them, we have a part of the statements here, and some of the checks are missing out of these statements. I have investigated and tried to find them, and have been unable to locate them, they were loaned to us by the administrator of the estate. In the place of each lost and canceled check, when I first inspected them, appeared a little notation describing briefly the items that were not in the statement. I don't know by whom those slips were made. I think during this time Mr. Peckham kept a bank account with the Security National Bank, I have a statement or two from that bank. We have three of the Security National Bank statements available, with the canceled checks behind them. Here is one with two slips, but I have one, and the other I do not have. This one shows it was handled in the former trial. This was in June, 1925, and I have a statement for March 1926, and one for April 1926 and that is the only three I have, and I tried to find some more and could not locate them.

Mr. Rogers:
We offer them in evidence.

(Marked "DEFENDANT'S EXHIBITS 11, 12 & 13" as follows:)

In lieu of copying the exhibits. Exhibit 11 purports to be the individual ledger statement of G. W. Peckham, with the Security National Bank of Wichita Falls, showing a balance on June 30, 1925 of $12.67. De-
524 posit on March 9, 1926, of $6,000.00, making a net balance of $6,012.67. A deposit on March 22, 1926, of $2,285.00, making a net balance of $8,397.67. Check on March 24, 1926 of $190.00, reducing the balance to $8,107.67. Accompanying the statement is a canceled check drawn by G. W. Peckham in favor of the Security National Bank dated March 24, 1926, for $190.00.

Exhibit 12, as follows:

Exhibit 12 is the individual ledger account of G. W. Peckham with the Security National Bank showing on April 5, 1926, an old balance of $8,107.67. Shows no deposits. Shows the following checks to have been drawn, April 16, 1926, $7,500.00; April 28, 1926, $79.50; May 8, 1926, $400.00; May 10, 1926, $6.80. Accompanying the same are four checks for $400.00, payable to cash. $79.30 payable to E. Scannell. $6.80 payable to E. E. Scannell, marked "My part taxes, 1925, Lot 16, block 44A." There is also found what purports to be a copy of a check for $7,500.00 payable to the Marlborough Addition.

Exhibit 13: Individual ledger sheet account of G. W. Peckham with the Security National Bank, starting with a balance of December 31, 1924, $6.42. The following deposits, June 8, 1925, $10,000.00; June 25, 1925, $9,-

500.00, showing the following checks or charges against it. June 11, 1925 $10,000.00; June 26, 1925, $9,493.75. Leaving a net balance of $12.67. Accompanying that is found only one original check, namely the one for $9,-
493.75, payable to Merchison and Fain Oil Con-
525 pany, as noted on it, 1/16th royalty, three hundred and seventeen acres, in block 1921 and 1922, South Anderson Ranch. Also sheet of paper which purports to be a copy of a check for $10,000.00 shown to be drawn in favor of the First National Bank of Tulsa.

The Witness:

Aside from those exhibits I do not have and have not seen any bank statements or what purports to be a bank statement or a copy of a bank statement of G. W. Peckham with the Security National Bank in Wichita Falls, Texas, or any checks drawn on that bank, or what purported to be a copy of any such checks.

At the beginning of business January 4, 1926, G. W. Peckham's personal account with the plaintiff bank was $838.70. The records indicate that on January 4, 1926, G. W. Peckham's account was credited with $5,000.00. There also shows on the Wichita Royalty Company account the same date there was charged a check of $5,000.00. That is check No. 452, of Wichita Royalty Company, signed by E. E. Scannell, indorsed G. W. Peckham. This check was paid on the 4th, against the account of Wichita Royalty Company, there was a $5,-000.00 charge, the one $5,000.00 check on that date. The deposit slip to G. W. Peckham's account only lists a $5,000.00 check, it does not say who it is on. From my examination and investigations of the books of the bank, and Wichita Royalty Company, the check No. 452, on the Wichita Royalty Company is the item charged against the royalty company's account and credited to the account of G. W. Peckham.

526 On January 5, 1926, G. W. Peckham paid from his personal deposit account in our bank, $812.00 to the Highlands Irrigation Company. The notation

on this check indicates that that was the purchase of some lots, 11, 12, 13 and 14 in block 44A; payable to Highland Irrigation Company, dated January 4, 1925, signed G. W. Peckham, and indorsed "pay to J. A. Kemp, Highland Irrigation Company, by C. M. Crowell" with J. A. Kemp's indorsement on it. The records indicate that on January 11, G. W. Peckham had a credit on his account of $5,000.00 and there was a charge, a check charged against the account of Wichita Royalty Company for $5,000.00 on the same date.

Check No. 458 for $5,000.00, perforated Paid January 11, 1926, payable to the company's order, that check was signed by E. E. Scannell, payable to the City National Bank and G. W. Peckham received a deposit for $5,000.00 on the same date. I think that money went to the credit of G. W. Peckham.

I have in my possession the check of G. W. Peckham for $2,567.75 in payment of his part of the purchase of the Curlee land. It is dated January 8, 1926, and charged against his personal account January 11, 1926. On January 16, 1926, the Wichita Royalty Company was charged upon its liability with $15,300.00. On January 18, the Royalty Company account was credited with $15,000.00. I also have a check to J. T. Harrell and C. E. Basham, dated January 15, 1926, for $2,201.32, signed
527 G. W. Peckham, and the notation says, "Vernon Royalty." That is known in the record as the Stephens Royalty. It is indorsed by J. T. Harrell and C. E. Basham. Mr. Peckham's balance on January 11, without including the $5,000.00 deposit was $2,456.00. Add to that all deposits he made thereafter, except the $5,000.00 one, to his payment to Mr. Harrell and Mr. Basham, and charging against that sum all checks which he drew upon his personal account, other than the ones to Mr. Harrell and Mr. Basham, he would have lacked approximately $1,362.87 having enough money in the bank to pay the Harrell and Basham checks; in other words, in other words, it took approximately that much of the $5,000.00 deposited, crediting

other items as suggested, in order to pay the Harrell and Basham checks. On January 18, the Wichita Royalty Company was credited with $15,000.00 proceeds of the loan; that day the Wichita Royalty Company's deposit account was charged with $15,769.07, and G. W. Peckham's personal account was credited with a like amount. This check No. 461, drawn on and payable to the plaintiff bank for $15,769.07, is the item by reason of which I charged the trust and credited Peckham. It is signed by Mr. Scannell. There was not any other deposit to the personal account of G. W. Peckham after the $15,769.07 deposit on January 18, prior to January 15, 1926, other than the $15,000.00. Then on January 25, without another deposit, as I have said, other than the $15,000.00, Mr. Peckham drew his check for $10,028.00, payable to Mr. Basham and Mr. Harrell. It was charged against his personal account and as heretofore shown
528 by the record, one-half deposited to Mr. Harrell's account and one-half to Mr. Basham's account. On January 23, 1926, before Mr. Harrell deposited his half of that check, his personal balance with the bank was $219.16. He did not make another deposit until he deposited this G. W. Peckham item, except an item of $15.70, and there was some checks on that, which made his balance $181.15. His balance was increased by the deposit of $5,014.00, paid by G. W. Peckham. On the same day Mr. Harrell paid the plaintiff bank $5,006.57, upon his personal liability to the bank. He would have been overdrawn at that time had that check been cleared in payment of his private debt to the bank, but for the payment to him and deposit of the payment by G. W. Peckham on that date, he would have been overdrawn $4,825.51.

I do not have a copy of the deed from Curlee to Peckham and Harrell and from Mr. Peckham to Mr. Harrell. The deed from W. S. Curlee to J. T. Harrell and G. W. Peckham is recorded in volume 243, page 577, Wichita County deed records. This other deed from Peckham to J. T. Harrell and C. E. Basham, recorded in volume 254, page 326, Wichita County Deed Records.

Mr. Rogers:
We offer those two deeds in evidence.

(Marked "Defendant's Exhibits 14 and 15" as follows:)

DEF. EXHIBIT 14.

Grantor, W. S. Curlee. Grantees J. T. Harrell and G. W. Peckham. Consideration, $4,814.00 cash in hand paid, the assumption of one note for $1,000.00
529 due in one year after August 24, 1924; note 2, for $1,000.00 due in two years after August 24, 1925, and Note 3, for $814.00. Said notes described in deed from Joe Kerr filed for record Vol. 250, page 334, Wichita County Deed Records. Grantee to pay all taxes for the year 1926.

Conveying Block 7, of Sales subdivision of the South one-half of northeast one-fourth of the J. A. Scott survey, No. 10, Abstract No. 302, being further described as follows, to-wit:

Dated January 8, 1926.

$5.00 revenue stamps affixed and canceled.

Duly acknowledged by W. S. Curlee, before Clarice Brown, Notary Public in and for Wichita County, Texas, January 8, 1926.

Filed for record January 11, 1926, at 8:00 A. M.

Recorded January 14, 1926, at 3:35 P. M.

530 DEFENDANT'S EXHIBIT 15.

Grantor G. W. Peckham; Grantee J. T. Harrell and C. E. Basham.

Consideration, $10.00 in cash and the assumption of note 1 for $1,000.00 due in one year after August 24, 1925;

Note No. 2, for $1,000.00 due in two years after August 24, 1925, and Note No. 3, for $814.00, said notes describes in deed from Joe Kerr filed for record in volume 250, page 334, Wichita County, Texas, deed records.

Conveying all right, title and interest, in an undivided one-half interest in and to; tract or parcel of land known as block No. 7 of Sayles Subdivision of the south one-half of northeast one-fourth of J. A. Scott Survey, No. 10, Abstract No. 302, being further described as follows:

Beginning at the northeast corner of block No. 8, of the same, being the Northwest corner of this Block No. 7, J. A. Scott survey No. 10; Thence East 1324.3 feet to the Northeast corner of Block No. 7; Thence South 89° 46' West 13333.1 feet to the Southwest corner thereof; Thence North 0° 06' East 1331.2 feet to the place of beginning, and containing 38.14 acres of land more or less, exclusive of a twenty-foot strip reserved for road right of way, together ith all improvements situated thereon. The only interest claimed by the grantor, is an undivided one-half interest.

531 Dated January 23, 1926.

Duly acknowledged by G. W. Peckham, before Ethel Covington, Notary Public in and for Wichita County, Texas, January 23, 1926.

Filed for record January 26, 1926, at 8:00 o'clock A. M.

Recorded January 28, 1926, at 3:23 P. M.

The Witness:

On February 2, 1926, the trust deposit was not charged to G. W. Peckham's personal account and credited with $400.00 in this bank, that is, the Security National Bank; on February 2, his account was credited with $400.00. I have the deposit slip. Though drawn on the Security

National Bank, that check, No. 466, was deposited to Mr. Peckham's personal account in the plaintiff bank. It was drawn payable to G. W. Peckham, indorsed G. W. Peckham and signed by E. E. Scannell, dated January 30. On February 2, G. W. Peckham paid Mr. Harrell and Mr. Basham $5,100.00 out of his personal account, one-half being deposited to Mr. Harrell and one-half to Mr. Basham.

Charging Mr. Peckham's original balance, plus his subsequent deposits, but excluding the $15,000.00 item, charging the sum thus arrived at with all of his checks down to but not including the two from Mr. Harrell and Mr. Peckham, of $5,100.00, he would have been overdrawn but for the $15,000.00. If you wipe off this $15,769.07, he would have been overdrawn about $13,890.00. The payment he made out of that account to Mr. Harrell and Mr. Basham, of $5,100.00, was out of the proceeds of
$15,000.00 deposit, if you charge all checks
532 against his account, other than the funds transferred. This $10,028.00 is also considered in that deal. On February 2, he could have paid that $5,100.00 check and got some more back. There are some checks in there paid that day, just glancing at it, that would have paid the $5,100.00 check. I would say there would have been an overdraft, but for the transfer of those funds upon the clearing of Mr. Harrell's check, that is, if you are going to charge that Stephens Royalty deal against that.

On February 13, 1926, Peckham's personal check of $550.00 was credited on his liability, and charged against his private account. On February 27, 1926, the records indicate that the Wichita Royalty Company account was charged $400.00, and there is a deposit on the same date of $400.00 to G. W. Peckham. The deposit slip shows a check on us for $400.00. The check was dated February 27, and paid on the same day, on the City National Bank, for deposit, and indorsed G. W. Peckham. Those initials on there, JMJ, mean Jack M. Jeffus. That notation on there, "WR" is my notation. In checking it over I came to the conclusion that trust check was the one deposited to

the account of G. W. Peckham. I also have a check dated February 26, 1926, paid February 27, 1926, payable to the order of City National Bank for $21,000.00, signed by G. W. Peckham, and says, "Escrow on Wilbarger Royalty." The proceeds of those funds were credited to O. T. Warlick, receiver, it went into escrow. Here are two cashier's checks, O. T. Warlick, Escrow,
533 . $5,000.00, and O. T. Warlick Receiver, $2,000.00, to be held in escrow No. 2,694. That shows to the credit of O. T. Warlick, receiver, on the back of the check. I think I can get that escrow file. On February 27, Mr. Harrell paid the bank on his indebtedness, out of his private account, $10,000.00. On February 26, he had borrowed $10,000.00 from the City National Bank and on February 27, he paid it back, and at the close of business February 27, he made a deposit, $23,827.96. He deposited $31,850.00 on February 27. I can get those deposit slips. Part of the $30,000.00 was not the proceeds of the $10,000.00 loan.

On March 1, 1926, Mr. Peckham's personal liability to the bank was $28,050.00; his personal balance at the beginning of business that day was $341.90. Mr. Harrell on that day owed the bank $7,060.00. At that time George Peckham and Mr. Harrell were liable upon the Marlborough indebtedness, in the amount of something over $50,000.00, I forget those dates, I don't know whether any of it had been paid or not, but I am sure it was as much as $50,000.00 on the first of March. W. H. Peckham owed the bank on March 1, 1926, $6,120.00, he was also obligated with Mr. Harrell upon the Marlborough Addition. On March 1, the original $25,000.00 loan to the Wichita Royalty Company was concluded, as shown by the minutes of the discount committee. G. W. Peckham's personal balance that morning was $341.90. Mr. Harrell then owed the bank $7,060.00. I have a check dated March 1, 1926, payable to the order of W. H. Peckham, for $11,811.85, signed by G. W. Peckham, the
534 notation, "Marlborough Addition," indorsed by W. H. Peckham, and paid by the City National

Bank March 9. That was George Peckham's purchase of W. H. Peckham's interest in the Marlborough Addition. G. W. Peckham's check to W. H. Peckham for $11,811.85, was more than G. W. Peckham's balance on March 1, which balance was $341.90, G. W. Peckham's check did not clear until March 9, 1926. There was not any deposit to G. W. Peckham's account after his deposit of $17,623.17 until the day W. H. Peckham's $11,000.00 check was cleared. W. H. Peckham's personal balance on March 9, prior to his depositing of that $11,811.85 check, was $518.52. On March 6, 1926, there was a check charged against the account of the Wichita Royalty Company for $17,623.90; George Peckham's account was credited with the same amount on the same day.

This check No. 478, which you now hand me, dated March 6, to the City National Bank, on the City National Bank, signed E. E. Scannell, no indorsement, there was a deposit to G. W. Peckham on that same day of the same amount, but no identification as to where it was or who it came from. The bank is the payee in that check, and I am of the opinion that it was deposited to the credit of George Peckham. There was a check charged against the account of George Peckham for $5,060.00, dated March 6, payable to J. T. Harrell and C. E. Basham, in the amount of $5,060.00, signed G. W. Peckham, and indorsed J. T. Harrell and C. E. Basham; then three days later W. H. Peckham cleared his $11,811.85 check. Before that deposit, W. H. Peckham's balance was
535 $518.52. On that date, W. H. Peckham paid to the bank his entire indebtedness of $6120.00, out of that account. Such payment to the bank, except to the extent of $218.52, was paid wholly out of the funds, the proceeds of the check of G. W. Peckham to W. H. Peckham.

I now have the deposits I was looking for, the aggregate sum is $33,000.00.

This check which you now hand me, dated January 16, 1923, No. 1194, payable to the order of the City National Bank for $1,040.00, signed by the Wichita Royalty Com-

pany, E. E. Scannell, drawn on the Security National Bank, Wichita Falls, Texas, was deposited to the account of George W. Peckham on January 17, 1923. A deposit slip states it is Wichita Royalty Company. Note, $1,000.00, interest $40.00, a total of $1,040.00, handled by cage 17, which is the collection department of the City National Bank. Mr. Deaton wrote the original of this deposit slip. We would not have the note. I do not have any information in respect to the notation only on the deposit slip. I did not handle the item. I did not look at the books and records of the Wichita Royalty Company to ascertain where the Wichita Royalty Company owed any notes. I do not have a photostatic copy or a copy of all of the books and records of the Wichita Royalty Company, some of the books I have not received, some cash books and some journals, the trustee told me they could not be found.

You hand me now check dated February 5, 1923, No. 1,217, payable to the order of G. W. Peckham, signed Wichita Royalty Company by E. E. Scannell trustee, drawn on the Security National Bank, Wichita Falls, Texas, indorsed G. W. Peckham, for $500.00. I have a copy of the deposit slip made on February 5, to George Peckham, G. W. Peckham, total $1,945.36, and in that there is a $500.00 check. I could not identify that to be the one. I am of the opinion that that is the one that was deposited in the plaintiff bank.

536

You now hand me check dated March 1, 1923, No. 1,445, payable to the order of G. W. Peckham, for $500.00, signed Wichita Royalty Company by E. E. Scannell for trustee, drawn on the Security National Bank, Wichita Falls, Texas, and indorsed G. W. Peckham. On March 1, there was a deposit to G. W. Peckham for $500.00. The check and the deposit was run through the same cage, but other than that, there is no marks of identification, but I am of the opinion that it is the same item.

You now hand me check dated March 13, 1923, No. 1,262, payable to the order of G. W. Peckham, $52.25, signed Wichita Royalty Company by E. E. Scannell,

trustee, drawn on the City National Bank of Wichita Falls, and indorsed G. W. Peckham. On March 14, there is a deposit of three checks to the account of G. W. Peckham and one of them is for $52.25. I am of the opinion that that is the same check that was deposited to the account.

You hand me a check dated February 21, no year date, No. 1,238, payable to the order of the City National Bank, in the amount of $1,046.66, signed Wichita
537 Royalty Company by E. E. Scannell, for trustee, drawn on the Security National Bank of Wichita Falls, handled by Cage No. 17, on the City National Bank. The deposit slip to G. W. Peckham's account dated March 1, 1923, says Wichita Royalty Company $1,000.00 note, interest $46.66, total $1,046.66.

You hand me now check dated March 31, 1923, No. 1,280, payable to the order of George W. Peckham for $500.00, signed by Wichita Royalty Company, by E. E. Scannell for trustee, and drawn on the City National Bank, Wichita Falls, indorsed G. W. Peckham. On April 2, 1923, I have a deposit totaling $3,026.67. There is no notation on the deposit. There is a check for $500.00. The check and deposit was handled by the same teller, and I am of the opinion that that is the check. Those instruments are dated February and March, 1923.

You now hand me check dated May 1, 1923, No. 1,310, payable to the order of G. W. Peckham, in the amount of $500.00, signed Wichita Royalty Company, by E. E. Scannell, for trustee, drawn on the City National Bank of Wichita Falls, Texas, indorsed G. W. Peckham. On May 8, 1923, I have a deposit totaling $900.00 to G. W. Peckham, $500.00 check on that deposit, and I am of the opinion that this check is the one that was deposited.

I now have check dated April 2, 1923, No. 1,282, payable to the order of the City National Bank for $1,006.67, signed Wichita Royalty Company by E. E. Scannell for trustee, drawn on the City National Bank, no
538 indorsement. On April 2, 1923, I have a deposit slip to the account of G. W. Peckham, totaling

$3,026.07. Three checks, there is one for the amount of this check, and I am of the opinion that this is the check that was deposited.

I next have check No. 1,281, dated April 2, 1923, payable to the order of the City National Bank, $1,520.00, signed Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank. There is a check for the same amount in that same deposit, as I previously told you about. I am of the opinion that that is the check that is listed on that deposit.

Next is trust check No. 1291, dated April 9, 1923, payable to the order of G. W. Peckham, signed Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank, indorsed G. W. Peckham. On April 10, 1923, I have a deposit to the account of G. W. Peckham for the same amount. No marks of identification on it other than the amount. I am of the opinion that that is the check that was deposited.

You next hand me check No. 1322, dated May 8, 1923, payable to the order of George W. Peckham, $400.00, signed Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank, indorsed George W. Peckham. On the same date there is a deposit for $900.00 to G. W. Peckham, $400.00 check listed thereon. There is no other marks, other than the same teller handled both items, and I am of the opinion that that is the check.

You next exhibit to me check dated May 11, 1923, No. 1325, payable to the order of George W. Peck-
539 ham for $2,533.33, signed by Wichita Royalty Company, by E. E. Scannell and drawn on the City National Bank, indorsed George W. Peckham. I have a deposit to George W. Peckham's account, May 11, 1923, for $2,533.33. The check and deposits were handled by the same teller, and I would be of the opinion that is the item.

I next have check No. 34, dated August 1, 1923, payable to G. W. Peckham for $500.00, signed Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank, indorsed G. W. Peckham and paid August 3, 1923.

I have a deposit slip dated August 3, 1923, to G. W. Peckham, totaling $533.34, made up of two items, one of them is a $500.00 check, and this check and deposit was handled by the same teller, and I am of the opinion that it was the same check.

I have here check dated August 14, 1923, No. 46, payable to the order of W. H. Peckham for $9,219.51, signed Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank, Wichita Falls, Texas, indorsed W. H. Peckham, and a second indorsement, G. W. Peckham. I have a deposit slip dated August 14, 1923, totaling $15,933.81, consisting of four checks, and there is a check for the same amount in there. There is no identification mark on it, other than that the teller handling the check and deposits, and I would be of the opinion that that is the check. It was deposited.

The next check is dated August 14, 1923, No. 47, payable to the order of B. L. Fain for $1,460.00,
540 signed Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank, indorsed by B. L. Fain and G. W. Peckham. There is a check in the same deposit for the same amount on the same date and I would be of the opinion that is the check for the deposit.

This check which you hand me, dated August 14, 1923, No. 48, payable to the order of W. H. Peckham in the amount of $1,033.33, signed Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank, Wichita Falls, Texas, indorsed W. H. Peckham and G. W. Peckham, there is a check of the same amount in the deposit slip on the same date, and I would be of the opinion that that was the check so deposited. The indorsements on the check looked to be in the same handwriting.

The next is a check dated August 14, 1923, No. 49, payable to the order of B. L. Fain for $4,120.97. The check is on the Wichita Royalty Company, by E. E. Scannell, drawn on the City National Bank and indorsed by B. L. Fain and G. W. Peckham. The check listed in the de-

posit slip on the same date for that amount, and I would be of the opinion that it is the same check that was deposited, to G. W. Peckham's account. I do not know whether that is the signature of B. L. Fain or not. The indorsement of B. L. Fain resembles the handwriting of G. W. Peckham on that check, it does not resemble the original signature of B. L. Fain, which I have examined.

The next check is dated August 31, 1923, No. 54, payable to the order of G. W. Peckham for $500.00 on
541 Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank, indorsed G. W. Peckham. Deposited on September 21, 1923, to G. W. Peckham's account, totaling $2,500.00. Two checks listed, one of them for $500.00, it is handled by the same teller, and I would be of the opinion that that is the check that was so deposited.

The next check, dated September 30, 1923, No. 73, payable to the order of G. W. Peckham for $500.00, drawn on the Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank, indorsed G. W. Peckham. On October 16, 1923, G. W. Peckham had a deposit of $503.77. There is a check listed in that deposit of $500.00. No other marks of identification other than the same teller handled both items, and I would be of the opinion that that is the check so deposited.

The next check is dated October 31, 1923, No. 92, payable to the order of G. W. Peckham for $500.00, drawn on the account of Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank, Wichita Falls, Texas, indorsed G. W. Peckham. On November 1, 1923, there was a deposit to the account of G. W. Peckham for $500.00. There is no marks of identification other than the teller handled the items, and I would be of the opinion that that is the check that was deposited to that account.

The next item, check dated November 14, 1923, No. 101, payable to the order of the City National Bank for $2200.00 signed Wichita Royalty Company by,

542 E. E. Scannell, drawn on the City National Bank, and handled by cage No. 18. This is the $2200.00 check, there is another one in there on the same date. I have two checks here, check No. 101, dated November 14, 1923, payable to the City National Bank in the amount of $2200.00, signed by the Wichita Royalty Company, by E. E. Scannell, drawn on the City National Bank. Also a check on the same date, No. 102, payable to the City National Bank for $500.00, drawn on the Security National Bank, Wichita Falls, drawn by the Wichita Royalty Company by E. E. Scannell, and indorsed by the City National Bank, payable to the City National Bank, and the City National Bank cleared it. Handled by cage No. 18, on November 16, 1923, and it was in payment of a cashier's check, No. 82342, payable to the order of G. W. Peckham, in the amount of $2,700.00, indorsed by G. W. Peckham and paid by the City National Bank on 11-16-23, the same date of its issuance. The cashier's check was deposited to George Peckham's account on November 16, 1923, and the deposit, $3,019.48, cashier's check was set out R. C. C. No. 82,342, $2700.00. Referring back to the $21,000.00 escrow item, that was this check dated February 21, 1926, payable to the City National Bank for $21,000.00, signed by G. W. Peckham with the notation, "escrow on the Wilbarger Royalty." Indorsed to O. T. Warlick, Receiver. It was deposited in the City National Bank, February 26, 1926, O. T. Warlick receiver deposit of $25,974.00. This check for $21,000.00 and another item for $5,000.00 and some revenue stamps deducted from that, making a deposit of $25,-
543 974.00—O. T. Warlick receiver. I can get you the record on the $5,000.00 item in just a minute.

The next item, dated December 19, 1933, No. 134, payable to the order of G. W. Peckham, $500.00, Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank, indorsed G. W. Peckham, deposited on December 24, 1923, for $500.00, to the account of G. W. Peckham. No other marks of identification, other than the same teller handled both the check and the deposit,

and I am of the opinion that that is the check so deposited.

The next item, dated January 19, 1924, No. 147, payable to the order of the City National Bank for $500.00, signed Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank and indorsed G. W. Peckham. I have a deposit on January 19, 1924, to the account of G. W. Peckham, no marks of identification on the deposit slip, other than that the teller handled both the check and the deposit, and I am of the opinion that this is the check so deposited.

The next item, check dated January 30, 1924, No. 149, payable to the order of George W. Peckham for $500.00, and Wichita Royalty Company, by E. E. Scannell, drawn on the City National Bank, Wichita Falls, indorsed George W. Peckham. We have a deposit dated January 31, 1924, for $500.00, to G. W. Peckham and no marks of identification, other than the teller handled the check and the deposit, and I am of the opinion that that is the check so deposited.

544 I have a check dated February 2, 1924, No. 154, payable to the order of B. L. Fain for $12,000.00 signed Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank, Wichita Falls. Indorsed B. L. Fain. I couldn't tell you whether that is Mr. Fain's signature or not. I have a deposit to the account of G. W. Peckham February 2, 1924, for $12,000.00, no marks of identification on it other than the teller's stamp. I do not know the handwriting of the lady secretary of Mr. Peckham at that time. That check was not deposited to B. L. Fain's account. There was a deposit by the same teller that cleared the check to the account of Mr. Peckham on the same day; from the investigation made of the books and records I have examined, it is my opinion that that item was the one deposited to the account of G. W. Peckham, but I could not swear that that was the one.

I can now tell you about the $5,000.00, Mr. Warlick, that is O. T. Warlick Receiver, and G. W. Peckham; this contract is between W. N. George of Tarrant County,

party of the first part, and G. W. Peckham, Wichita Falls, party of the second part, on the forty acres directly south of the forty-six and a half acre lease out of the northwest corner of Survey No. 29, J. Pointevant Survey, Wilbarger County, Texas. For a period of five years, and a half of the one-eighth royalty in the following described land. The party of the second part agrees to pay the party of the first part, a cash consideration of $26,000.00 for the property and leases. George Peckham paid $5,000.00—I do not have the check, but here is the slip that
545 was in there. The records indicate that G. W. Peckham paid George $5,000.00 on February 8, 1926, being cleared February 10, 1926, against his account with our bank. I do not have the deposit slip from Mr. George, where it was deposited. There was a cashier's check purchased for $5,000.00 by W. N. George, I believe it is, I can look at the record, but I believe that is correct. That amount of $7,000.00 was not run through to the credit of Warlick. This was held with the escrow agreement, and when the escrow was closed on the 26th of February, 1926, received a $21,000.00 check of George Peckham's and the $5,000.00 escrow, that is the set up here. As to what happened to the $2,000.00 of George's as shown by the February 10 deposit slip, this was just put in there and this agreement evidently came in in the place of that. I would be glad to look that up and see if there was not a cashier's check for $5,000.00 of George there.

The next is check No. 160, dated February 9, 1924, payable to G. W. Peckham for $2,500.00 on Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank, indorsed G. W. Peckham; on February 9, 1924, a deposit to G. W. Peckham's account for $2500.00, handled by teller No. 7. No other marks of identification. I am of the opinion that that is the check so deposited. The same item.

The next is a check dated February 29, 1924, No. 169, payable to the order of G. W. Peckham, $1,200.00, signed Wichita Royalty Company by E. E. Scannell, drawn

546 on the City National Bank of Wichita Falls, indorsed G. W. Peckham. On the 29th of February, I have a deposit of $1,200.00, to the account of G. W. Peckham. No marks of identification other than the same teller handled both items, and I am of the opinion that that is the check so deposited.

The next item is a check dated March 1, 1924, No. 171, payable to the order of G. W. Peckham for $500.00, signed Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank indorsed G. W. Peckham. I have a deposit slip dated March 4, 1924, for $500.00 to G. W. Peckham. There are no other marks of identification other than the teller's stamp indicating that he handled both items, and I would be of the opinion that that check was the one so deposited.

The next item, a check dated March 17, 1924, No. 185, payable to the order of G. W. Peckham for $9,250.00, drawn on the Wichita Royalty Company by E. E. Scannell on the City National Bank, indorsed G. W. Peckham. I have a deposit slip, March 18, 1924, totaling $9,292.36. This check is the one handled because it has the teller's number on it, 7748, on the deposit, and on the back of the check, that is the identical check so deposited.

I next have a check dated March 31, 1924, No. 188, payable to the order of G. W. Peckham for $500.00, drawn by the Wichita Royalty Company by E. E. Scannell on the City National Bank, and indorsed G. W. Peckham. Deposited by G. W. Peckham on March 29, 1924, in his deposit, totaling $1,151.58. This check is in that
547 list, has the teller's number, 7,702 on the deposit slip on the back of the check.

The next is a check dated April 30, 1924, No. 205, payable to the order of G. W. Peckham for $500.00, drawn on the Wichita Royalty Company by E. E. Scannell, on the City National Bank, indorsed G. W. Peckham. I have a deposit dated May 1, 1924, to G. W. Peckham for $500.00. No marks of identification other than the regular stamp. I am of the opinion that that check was the one, I am not positive.

The next check is dated June 28, 1924, No. 232, payable to G. W. Peckham for $500.00, drawn on the Wichita Royalty Company by E. E. Scannell, on the City National Bank, indorsed G. W. Peckham. I have a deposit slip on June 28, 1924, to the account of G. W. Peckham for $949.18. In this list of checks there is one for $500.00. No marks of identification other than the teller handled both items, and I am of the opinion that that check was so deposited.

Next I have a check dated July 30, 1924, No. 247, payable to G. W. Peckham for $500.00 on the Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank, indorsed G. W. Peckham, on August 1, 1924. The deposit totals $564.65. There is a $500.00 check in there. There is a teller's transit No. 6352 on the deposit slip, also on the check. That is the check deposited.

I next have check No. 251, July 31, 1924, payable to G. W. Peckham, $55.35, drawn on the Wichita Royalty Company by E. E. Scannell, on the City National Bank of Wichita Falls, indorsed by G. W. Peckham.
548 I have a deposit on August 1, 1924, totaling $564.65. There is a check of this amount in there. Teller's transit No. 6352, appears on the deposit slips, also on the check. That check was deposited to his account.

The next check is dated September 30, 1924, No. 272, $500.00, payable to G. W. Peckham, on the Wichita Royalty Company, by E. E. Scannell, drawn on the City National Bank and then indorsed G. W. Peckham.

You next place before me a group of checks, which I will identify and describe and tell what disposition, as reflected by the bank records, was made, of the various parties.

I have a deposit slip on October 18, 1924, totaling $900.00, $500.00 check listed. No marks of identification other than the teller handled both items, and I am of the opinion that that is the check deposited.

I have here a check dated October 31, 1924, No. 286, payable to G. W. Peckham for $500.00, signed Wichita

Royalty Company by E. E. Scannell, drawn on the City National Bank and indorsed G. W. Peckham. I have a deposit slip on August 21, 1931, for $500.00. No marks of identification other than the teller handled both items. The same slip, and I am of the opinion that that check was the one deposited.

I have a check dated July 2, 1924, No. 237, payable to the order of the Security National Bank, in the amount of $7,000.00. This check is signed Wichita Royalty Company by E. E. Scannell, and drawn on the City
549 National Bank and indorsed Security National Bank of Wichita Falls, the date is indistinct, it came through the Security National Bank and the Security National Bank sent it to us and we paid it, and that is their indorsement where it came from.

I have a check dated November 29, 1924, No. 304, payable to G. W. Peckham for $500.0, signed Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank, Wichita Falls, indorsed G. W. Peckham. On November 29, 1924, there was a deposit to the account of G. W. Peckham for $4,000.00. In that list of checks there was one for $500.00 handled by the same teller, both items, and I am of the opinion that this is a check deposited to that account.

The next check, dated December 23, 1924, No. 317, payable to the order of G. W. Peckham, for $695.00, signed Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank, indorsed G. W. Peckham. On December 23, 1924, I have a deposit slip totaling $702.37. Two items, one check for $695.00. No other marks of identification. I am of the opinion that that is the check deposited.

Check dated December 31, 1924, No. 320, payable to G. W. Peckham for $500.00, signed Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank, indorsed G. W. Peckham. Deposit on January 3, 1925, totaling $5,513.00. In that list of checks there is one for $500.00, no other marks of identification and I am
550 of the opinion that that is the check deposited. The perforated date is the same as the deposit

slip. That is also true as to all of the checks that I have testified to, the perforation date and the date of the deposit slips which I have identified agree. In my answers hereafter, I will identify the perforation date with the date of the deposit slip to which I refer.

I have a check dated February 4, 1925, No. 338, payable to the order of G. W. Peckham for $400.00, drawn on the Wichita Royalty Company by E. E. Scannell, on the City National Bank, Wichita Falls, indorsed G. W. Peckham. I have a deposit slip of February 5, 1925, totaling $11,420.33. The teller's transit Number 7709 appears on the deposit slip, also on the check. This is the check that was deposited to that account. $400.00 check was listed in that deposit.

The next is check dated February 25, 1925, No. 347, payable to G. W. Peckham for $400.00, signed Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank, indorsed G. W. Peckham. Paid on March 5, 1925. I have a deposit slip to G. W. Peckham on the same date for $400.00, the teller handled both items, and I am of the opinion that that is the check deposited.

Next is a check dated March 31, 1925, No. 357, payable to G. W. Peckham for $400.00, signed Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank, indorsed G. W. Peckham, paid April 2, 1925. April 2, 1925, I have a deposit totaling $425.00, G. W. Peckham, there is a $400.00 check listed on this deposit, the same fellow handled both items, and I am of the opinion that that is the check deposited.

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Check dated April 30, 1925, No. 370, payable to the order of G. W. Peckham for $400.00. Signed Wichita Royalty Company by E. E. Scannell, and drawn on the City National Bank of Wichita Falls, and indorsed G. W. Peckham. Paid May 2, 1925. I have a deposit slip dated the same day for $400.00, to the account of G. W. Peckham. The same teller handled both items, and I am of the opinion that is the check so deposited.

Check dated May 5, 1925, No. 373, payable to the order of G. W. Peckham for $2,500.00, signed Wichita Royalty

Company by E. E. Scannell, drawn on the City National Bank, indorsed G. W. Peckham, paid May 5, 1925. I have a deposit G. W. Peckham's account on May 5, 1925, for $2,500.00. This check and deposit was handled by the same teller, and I am of the opinion that that is the check deposited.

Check dated May 25, 1925, No. 378, payable to the order of G. W. Peckham for $400.00, signed Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank, indorsed G. W. Peckham. Check paid on June 2, 1925, and on that date G. W. Peckham has a deposit of $400.00. The same teller handled both items, and I am of the opinion that that is the check deposited.

Next check dated June 24, 1925, No. 385, payable to the order of G. W. Peckham, in the amount of $6,000.00, signed Wichita Royalty Company by E. E. Scan-
552 nell. This check is canceled paid June 25, 1925. Our ledger indicates that there was a $6,000.00 check paid on June 20, 1925. This check was on the Security National Bank and was later changed to the City National Bank. It was cleared by the City National Bank on June 25. Indorsement was canceled, check marked "Insufficient" and then that is scratched out. I have a deposit on June 24, 1925, to the account of G. W. Peckham for $6,000.00, and this was handled by teller No. 8, which is canceled paid on the 25th, and our ledger shows there was a $6,000.00 check paid—I am in error, I was looking at the wrong sheet. That check was paid by the City National Bank on May 25. There was a deposit to G. W. Peckham on the 24th for $6,000.00, was handled by the same teller, and there are no other marks of identification, and I am of the opinion that that is the check. There is a discrepancy between the perforated date of the payment of the check and the date of deposit, I can explain that in this way: This was run to the Security National Bank, indorsed by us on the 25th, that would have gone out in the afternoon and cleared the following morning, but it came back that day and was paid by the bank that day, it was returned from the Security National Bank which

was the 25th. It originally was drawn on the Security National Bank, but that bank did not have the money to honor the check, and it is marked "Insufficient." It came back and the name was changed from the Security to the City National Bank and was paid by the City National Bank.

553 I have a check dated June 29, 1925, No. 387, payable to the order of G. W. Peckham for $5,000.00, signed Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank of Wichita Falls, indorsed by G. W. Peckham. Check paid on June 29, 1925. June 29, 1925, there was a deposit totaling $5,500.00, to be credited to G. W. Peckham. There was a check in that deposit of $5,000.00, the item was handled, both items, handled by the same teller, and I am of the opinion that that is the check deposited.

Check dated June 30, 1925, No. 388, payable to the order of G. W. Peckham in the amount of $400.00, signed Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank, indorsed G. W. Peckham and paid on July 7, 1925. On July 7, 1925, there was a deposit totaling $451.50 to G. W. Peckham, and in that list of checks on that deposit, there was one for $400.00. I am of the opinion that that is the check so deposited.

Check dated July 31, 1925, No. 400, payable to the order of G. W. Peckham for $400.00, signed Wichita Royalty Company by E. E. Scannell, and drawn on the City National Bank of Wichita Falls, indorsed G. W. Peckham. Paid August 3, 1925. I have a deposit slip of August 3, 1925, to the account of G. W. Peckham totaling $837.92. Two checks, one of them was for $400.00, and I am of the opinion that this is one of the checks so deposited.

Check dated August 31, 1925, No. 411, payable to G. W. Peckham for $400.00, signed Wichita Royalty Company

554 by E. E. Scannell, drawn on the City National Bank, Wichita Falls, indorsed G. W. Peckham. Paid by the City National Bank on September 10, 1925. I have a deposit to G. W. Peckham's account on

the same date, totaling $785.94, there is a $400.00 check in that list of checks, on that deposit, on that day, and I am of the opinion that that is the check.

Check dated September 30, 1925, No. 422, payable to the order of G. W. Peckham for $400.00, signed Wichita Royalty Company, by E. E. Scannell, drawn on the City National Bank, indorsed G. W. Peckham. Paid on September 30, 1925. Deposit of the same date to G. W. Peckham's account for $453.92. There is a check for $400.00 listed on there, with no other marks of identification other than the teller handled both items. I am of the opinion that that is the check deposited.

Check dated October 8, 1925, No. 427, payable to the order of the City National Bank for $5,500.00, drawn by the Wichita Royalty Company, signed E. E. Scannell, check drawn on the City National Bank, no indorsement on it. I have a deposit to the account of G. W. Peckham on October 8, 1925, the day this check was canceled, of $5,500.00, handled by the same teller. No other marks of identification, and I am of the opinion that that is the check deposited.

I have a check dated October 31, 1925, No. 433, for $400.00, payable to the order of G. W. Peckham, signed Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank and indorsed G. W. Peckham. Check paid on November 2, 1925. November 2, 1925, there was a deposit to the account of G. W. Peckham for $400.00, the check and the deposit were handled by the same teller, and I am of the opinion that that is the check.

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Check dated December 1, 1925, No. 444, payable to the order of G. W. Peckham for $400.00, signed Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank, indorsed G. W. Peckham. Check paid on December 3, 1925. December 3, 1925, I have a deposit totaling $5,291.44, to the credit of G. W. Peckham. There is a $400.00 check listed thereon, and I am of the opinion that that check was the one deposited.

Check dated December 28, 1925, No. 451, payable to the order of City National Bank for $1,250.00, signed

Wichita Royalty Company, by E. E. Scannell, drawn on the City National Bank. Notation on the back, credited to the account of G. W. Peckham. I have a deposit slip dated December 28, 1925, for $1,250.00. The check was deposited to his account.

Check dated December 31, 1925, No. 453, payable to the order of G. W. Peckham, for $400.00, signed Wichita Royalty Company, by E. E. Scannell, drawn on the City National Bank, indorsed G. W. Peckham. I have a deposit slip dated 12-31-25, that is the date the check was paid, for $400.00. Both items handled by the same teller. I am of the opinion that that is the check deposited to that account.

Check dated January 4, 1926, No. 452, payable to the order of G. W. Peckham, $5,000.00, paid January
556 4, 1926, drawn by the Wichita Royalty Company signed by E. E. Scannell, on the City National Bank, and indorsed G. W. Peckham. I have a deposit slip for $5,000.00, dated January 4, 1926, to G. W. Peckham, and the same teller handled both items, and I am of the opinion that that is the check so deposited.

Check dated January 11, 1926, No. 458, payable to the order of the City National Bank for $5,000.00, signed Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank, no indorsement. Paid on January 11, 1926. I have a deposit slip dated the same day, to G. W. Peckham, for $5,000.00. I am of the opinion that that is the check and deposit slip.

Check dated January 18, 1926, No. 461, payable to the order of the City National Bank for $15,769.07, signed by the Wichita Royalty Company, by E. E. Scannell, drawn on the City National Bank, Wichita Falls, with no indorsement. I have a deposit slip dated January 18, 1926. This check was paid on January 18, 1926. This deposit slip is for the amount of $15,769.07, and that is the check deposited to that account.

Check dated January 30, 1926, No. 466, payable to the order of G. W. Peckham, for $400.00, signed Wichita Royalty Company, by E. E. Scannell. Check drawn on

Security National Bank, Wichita Falls, and indorsed G. W. Peckham. I have a deposit slip on February 2, 1926, for $400.00. Tellers transit No. 7890 appears on the check and on the deposit slip, and that check
557 was deposited to his account.

Check dated February 27, 1926, No. 477, payable to the order of G. W. Peckham for $400.00, signed Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank of Wichita Falls, indorsed G. W. Peckham. Paid on February 27, 1926. Deposit slip to G. W. Peckham for $400.00, the same date. Both items handled by the same teller, and I am of the opinion that is the check deposited.

I have a check dated March 6, 1926, No. 478, payable to the order of City National Bank in the amount of $17,623.70, signed Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank. The check was paid on March 6, 1926. On the same date there was a deposit to the account of G. W. Peckham for the same amount. The same teller handled both items, and I am of the opinion that that is the check so deposited.

I have a check dated March 31, 1926, No. 485, payable to the order of City National Bank in the amount of $7,500.00, signed Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank. Paid on March 31, 1926. The same day there was a deposit to the account of G. W. Peckham, for $7,500.00. The same teller handled both items, and I am of the opinion that that was the check paid.

I have a check dated April 1, 1926, No. 487, payable to the order of G. W. Peckham, in the amount of $400.00, signed Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank, indorsed G. W.
558 Peckham, and paid on April 3, 1926. The same day there was a deposit in the amount of $600.00 to G. W. Peckham and a check for $400.00 listed thereon. The same teller handled both items, and I am of the opinion that that was the check deposited.

Check dated May 3, 1926, No. 497, payable to the order of G. W. Peckham in the amount of $400.00, signed Wich-

ita Royalty Company by E. E. Scannell, drawn on the City National Bank, indorsed G. W. Peckham. Paid on May 5, 1926. No deposit slip on those dates, that was evidently cashed over the window—I could not swear that that is a fact. My best judgment from my examination is that it was cashed at the window.

Check dated May 20, 1926, No. 503. Payable to the order of G. W. Peckham, for $3,000.00, signed Wichita Royalty Company, by E. E. Scannell, drawn on the City National Bank of Wichita Falls, indorsed G. W. Peckham, and paid on May 20, 1926. On the same date there was a deposit for $3,000.00 to G. W. Peckham. Both items were handled by the same teller, and I am of the opinion that that was the same check deposited.

I have a check dated May 30, 1926, No. 505, payable to G. W. Peckham for $400.00, signed Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank, and indorsed G. W. Peckham, paid on May 29, 1926. On the same date, I have a deposit slip to G. W. Peckham for $456.25. There is a check listed on this deposit slip for $400.00. The same teller handled
559 both items, and no other marks of identification, and I am of the opinion that that was the check deposited.

The next is a check dated May 29, 1926, No. 507, payable to the order of City National Bank for $1,500.00, signed Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank and indorsed G. W. Peckham. Check paid June 2, 1926. On the same date, there was a deposit to the account of G. W. Peckham for $1,500.00. The same teller handled both items, and I am of the opinion that that is the check deposited.

I have a check dated June 15, 1926, No. 510, payable to the order of City National Bank for $4,500.00, signed Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank. Paid June 16, 1926. I have a deposit on June 16, 1926, for $4,500.00, to G. W. Peckham. The same teller handled both items, and I am of the opinion that that was the item deposited.

The next, a check dated June 30, 1926, No. 512, payable to the order of G. W. Peckham, signed Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank of Wichita Falls, indorsed G. W. Peckham. On July 6, 1926. Deposit slip to G. W. Peckham on July 6, 1926, totaling $442.00. There is a check for $400.00 listed therein. Both items handled by the same teller, and I am of the opinion that that is the check so deposited.

Next, a check dated July 13, 1926, No. 519, payable to the order of City National Bank for $1,000.00, signed Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank, paid on July 15, 1926. I have a deposit on the same date for $1,000.00 to the account of G. W. Peckham, both items were handled by the same teller, and I am of the opinion that that was the check deposited.

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A check dated March 6, 1926, No. 479, payable to the order of the Security National Bank for $6,000.00, signed Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank. That was indorsed Security National Bank. The date of the indorsement I am unable to read. Paid by the City National Bank on March 10, 1926. I could not tell you what happened to the money, other than it went to the Security National Bank, came through the Security National Bank. The City National Bank paid the Security National Bank for it.

Next, a check dated July 31, 1926, No. 523, payable to the order of G. W. Peckham, for $400.00, signed Wichita Royalty Company by E. E. Scannell, and drawn on the City National Bank, indorsed G. W. Peckham. Paid on August 2, 1926. On August 2, 1926, there was a deposit to the account of G. W. Peckham, for $400.00. The same teller handled both items, and I am of the opinion that that was the check.

Next, check dated August 2, 1926, No. 525, payable to the City National Bank, for $4,000.00, signed Wichita Royalty Company by E. E. Scannell. Drawn on the

City National Bank. Paid on August 2, 1926. On the same date there was a deposit for $4,000.00 to
561 G. W. Peckham's account. Both items were handled by the same teller, and I am of the opinion that that was the check deposited.

Check dated August 27, 1926, No. 532, payable to the order of City National Bank, in the amount of $4,357.58, signed Wichita Royalty Company by G. W. Peckham, drawn on the City National Bank. Paid August 27, 1926. On the same day there was a deposit for $4,357.58, to the account of G. W. Peckham. The same teller handled both items, and I would be of the opinion that that was the check deposited.

I have a check dated September 30, 1926, No. 537, payable to the order of G. W. Peckham, for $400.00, signed Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank, indorsed G. W. Peckham. Canceled paid September 30, 1926. On the same day there was a deposit to G. W. Peckham's account totaling $1,253.00. There is four checks. Check for $400.00 listed. The same teller handled both transactions, and I am of the opinion that that would be the check deposited.

A check dated October 13, 1926, No. 541, payable to the order of City National Bank $10,000.00, signed Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank. Paid October 14, 1926. On the same date there was a deposit of $10,000.00 to G. W. Peckham. The same teller handled both transactions—both items—and I would be of the opinion that that was the check deposited.

562 Check dated October 30, 1926, No. 545, payable to the order of G. W. Peckham for $400.00, signed Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank, indorsed G. W. Peckham. Paid on October 30, 1926. On the same day there was a deposit to the account of G. W. Peckham for $5,413.00. A $400.00 check listed thereon, both items handled by the same teller, and I am of the opinion that that was the check deposited.

Check dated November 20, 1926, No. 550, payable to the order of the City National Bank for $7,500.00, signed Wichita Royalty Company by G. W. Peckham, drawn on the City National Bank, Wichita Falls, Texas, indorsed on the back thereof, deposited in the City National Bank of Wichita Falls, Texas, to the credit of G. W. Peckham. He had a deposit on November 20, of $7,500.00 listed on the deposit slip as Wichita Royalty Company. That was the check deposited.

Check dated November 30, 1926, No. 552, payable to the order of G. W. Peckham for $400.00, signed Wichita Royalty Company, by E. E. Scannell, and drawn on the City National Bank of Wichita Falls, indorsed G. W. Peckham. December 2, 1926, it was paid. On the same date we had a deposit to G. W. Peckham for $1900.00 and a $400.00 check listed thereon. I am of the opinion that that was the check deposited.

December 2, 1926, Check No. 554, payable to the order of the City National Bank, $1,500.00, signed Wichita Royalty Company by E. E. Scannell, payable to the order of the City National Bank, drawn on the City
563 National Bank, indorsed G. W. Peckham by A. B. Check was paid on December 2, 1926. On the same date there was a deposit of $1900.00 and there was a $1500.00 check listed thereon. I am of the opinion that that was the check deposited.

A check dated December 22, 1926, No. 556a, payable to the order of G. W. Peckham, $538.16, signed Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank, Wichita Falls, indorsed G. W. Peckham, paid January 4, 1927. I have a deposit slip dated January 3, 1927, totaling $998.16. There is a check for $400.00 listed thereon. I mean $538.16, listed thereon. I am of the opinion that that is the check deposited.

Check dated December 31, 1926, No. 564, payable to the order of G. W. Peckham, $400.00, signed Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank, indorsed G. W. Peckham, paid January 4, 1927, and this $400.00 check—there is a $400.00 check

listed in that deposit of $998.16, and I am of the opinion that that check was the one deposited.

Check dated January 19, 1927, No. 571, payable to the order of City National Bank for $2,000.00, signed Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank. Paid on January 19, 1927. The same day there was a deposit of $2,000.00 to G. W. Peckham's account. The same teller handled both items, and I am of the opinion that that was the check deposited.

564 Check dated January 31, 1927, No. 574, payable to the order of G. W. Peckham for $400.00, signed by the Wichita Royalty Company, by E. E. Scannell, drawn on the City National Bank of Wichita Falls, indorsed G. W. Peckham, paid on February 2, 1927. Deposit slip dated the same day, to the order of G. W. Peckham, for $454.76. There is a $400.00 check listed on that deposit. Both items handled by the same teller and I am of the opinion that that was the check deposited.

I have a check dated February 19, 1927, No. 579, payable to the order of City National Bank for $2500.00, signed Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank. Paid on February 19, 1927. Deposit dated February 19, 1927, for $4,000.00. There is a $2,500.00 check listed in that deposit. Both items handled by the same teller, and I am of the opinion that that check was deposited.

Check dated February 28, 1927, No. 581, payable to the order of G. W. Peckham for $400.00, signed Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank of Wichita Falls, and indorsed G. W. Peckham. On March 3, 1927, the check was paid. Deposit slip dated March 2, 1927, for $400.00. Both items being handled by the same teller, I am of the opinion that that was the check deposited.

Check dated March 1, 1927, No. 582, payable to the order of City National Bank, $500.00, signed Wichita Royalty Company, by E. E. Scannell, drawn on

565 the City National Bank, paid on March 8, 1927. I have a deposit slip here on March 8, to the ac-

count of G. W. Peckham on March 8, 1927, for $500.00. The notation says "Wichita Royalty Company." That is the check deposited.

March 31, 1927, check No. 594, payable to the order of G. W. Peckham, $400.00, signed Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank. indorsed G. W. Peckham, paid April 2, 1927. I have a deposit to G. W. Peckham on April 2, 1927, for $400.00. I am of the opinion that that is the check deposited.

Check dated March 1, 1927, No. 583, to the order of City National Bank, $301.82, signed Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank, indorsed G. W. Peckham, paid March 16, 1927. I have a deposit slip on the same date to G. W. Peckham, totaling $883.82. There is a check for $301.82, listed on that deposit slip, and I am of the opinion that that is the check deposited.

Check dated March 3, 1927, No. 591, payable to the order of City National Bank for $2,000.00, signed Wichita Royalty Company by E. E. Scannell, and drawn on the City National Bank, indorsed G. W. Peckham. Paid on March 23, 1927. I have a deposit slip on the same date to G. W. Peckham's account, totaling $2,037.02, and there is a $2,000.00 check listed, and I am of the opinion that that was the check deposited.

Check dated April 23, 1927, No. 602, payable
566 to the order of B. L. Fain, for $1,000.00, signed Wichita Royalty Company, by E. E. Scannell, drawn on the City National Bank, Wichita Falls, indorsed B. L. Fain, G. W. Peckham. Paid on April 23, 1927. Deposit slip on the same date to G. W. Peckham for $1,000.00. Both items were handled by the same teller, and I am of the opinion that that is the check deposited. I could not swear that that is the original signature of B. L. Fain. I am of the opinion that it was deposited to the account of G. W. Peckham.

April 30, 1927, check No. 604, payable to the order of G. W. Peckham for $400.00, signed Wichita Royalty Company, by E. E. Scannell, and drawn on the City Na-

tional Bank, indorsed G. W. Peckham, paid on April 30, 1927. I have a deposit on the same day to G. W. Peckham, for $400.00. Both items having been handled by the same teller, I am of the opinion that that was the check deposited.

Check dated May 6, 1927, No. 607, payable to the order of B. L. Fain, for $500.00, signed Wichita Royalty Company by E. F. Scannell, drawn on the City National Bank, indorsed B. L. Fain, and G. W. Peckham, paid May 6, 1927. Deposit on the same day to G. W. Peckham. Notation, "Wichita Royalty Company, $500.00." That is the check deposited.

Check dated May 16, 1927, No. 610, payable to the order of B. L. Fain for $1,000.00, signed Wichita Royalty Company by E. E. Scannell, drawn on the City
567 National Bank, Wichita Falls. Indorsed B. L. Fain, and G. W. Peckham, paid on May 16, 1927. I have a deposit to the account of G. W. Peckham on May 16, 1927, for $1,000.00. Those items being handled by the same teller, I am of the opinion that that was the check so deposited.

Check dated May 21, 1927, No. 614, payable to the order of G. W. Peckham, $400.00, signed Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank, indorsed G. W. Peckham. Paid on June 8, 1927. I have a deposit on the same date, G. W. Peckham, $400.00. I am of the opinion that that was the check deposited.

Check dated June 18, 1927, No. 620, payable to the order of the City National Bank, $1,200.00, signed Wichita Royalty Company, by E. E. Scannell, drawn on the City National Bank, paid on June 18, 1927. I have a deposit on June 18, 1927, to G. W. Peckham for $1,200.00. Both items handled by the same teller, and I am of the opinion that that was the check deposited.

Check dated June 30, 1927, No. 623, payable to the order of G. W. Peckham for $400.00, signed Wichita Royalty Company, by E. E. Scannell, drawn on the City National Bank, indorsed G. W. Peckham. Dated on July 1, 1927. Same date there was a deposit of $400.00

to G. W. Peckham, and I am of the opinion that that was the check deposited.

568 Check dated July 21, 1937, No. 630, payable to the order of G. W. Peckham, for $400.00. Signed Wichita Royalty Company, by E. E. Scannell, drawn on the City National Bank, indorsed G. W. Peckham. Paid on August 1, 1927. At that time, a deposit on the same date to G. W. Peckham for $400.00. I am of the opinion that that was the check deposited.

Check dated August 16, 1927, No. 635, payable to the order of the City National Bank for $1,500.00, signed Wichita Royalty Company by G. W. Peckham, drawn on the City National Bank, paid August 16, 1927. I have a deposit slip to G. W. Peckham, August 16, 1927, for $1,500.00. I am of the opinion that that was the same check deposited.

Check dated September 3, 1927, No. 637, payable to the order of G. W. Peckham for $400.00, signed Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank, indorsed G. W. Peckham, paid September 6, 1927. A deposit on the same date to G. W. Peckham, $400.00. I am of the opinion that that was the same check deposited.

The next check dated October 14, 1927, No. 650, payable to the order of City National Bank for $2,400.00, signed Wichita Royalty Company by E. E. Scannell, and drawn on the City National Bank of Wichita Falls. Paid on October 15, 1927. The same date there was a deposit to G. W. Peckham for $2,400.00. Both items were handled by the same teller, and I am of the opinion that that is the check so deposited.

569 Check dated November 1, 1927, No. 653, payable to the order of G. W. Peckham for $400.00, signed Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank, indorsed by G. W. Peckham. Paid on November 5, 1927. I have a deposit to G. W. Peckham of the same date for $400.00. I am of the opinion that that was the check so deposited.

Check dated November 25, 1927, No. 657, payable to the order of City National Bank for $1,800.00, signed Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank, to G. W. Peckham for $1,800.00, and I am of the opinion that that was the check deposited.

I have a check dated November 30, 1927, No. 659, payable to the order of G. W. Peckham for $400.00, signed Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank, indorsed G. W. Peckham, paid on December 5, 1927, for $400.00. It says Wichita Royalty Company, that is the check so deposited.

Next check, December 27, 1927, No. 672, payable to the order of G. W. Peckham for $400.00, signed Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank of Wichita Falls, indorsed G. W. Peckham. Paid December 27, 1927. The same date there was a deposit to G. W. Peckham for $400.00. Notation, Wichita Royalty Company check. This check was deposited to G. W. Peckham's account.

The next check is dated December 20, 1927, No. 670, payable to the order of G. W. Peckham, for
570 $147.33, signed Wichita Royalty Company by G. W. Peckham, drawn on the City National Bank of Wichita Falls, indorsed G. W. Peckham. Paid December 21, 1927. There was a deposit of that amount to G. W. Peckham's account on the same date. I am of the opinion that was the check deposited.

Check dated January 1, 1928, No. 684, payable to the order of G. W. Peckham, for $400.00, signed Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank, indorsed by G. W. Peckham. Paid January 31, 1928. Deposited to G. W. Peckham's account on that date, $400.00, and I am of the opinion that that was the check which he deposited.

February 29, 1928, check No. 692, payable to the order of G. W. Peckham for $400.00, signed Wichita Royalty Company, by E. E. Scannell, on the City National Bank, indorsed, G. W. Peckham. Paid on March 6, 1928. And on March 6, 1928, there is deposited to

G. W. Peckham's account $458.00, $400.00 check listed, and I am of the opinion that that was the check so listed.

Check dated March 31, 1928, No. 701, payable to the order of G. W. Peckham, for $400.00, signed Wichita Royalty Company by E. E. Scannell and drawn on the City National Bank, indorsed G. W. Peckham. Paid March 31, 1928. The same date there was a deposit to G. W. Peckham's account for $400.00. I am of the opinion that that was the check deposited.

571 Check dated April 6, 1928, payable to the order of the City National Bank. No. 702. Payable to the order of City National Bank for $548.12, signed by the Wichita Royalty Company, by E. E. Scannell, drawn on the City National Bank. Paid on April 6, 1928. The same date there was a deposit for $548.12, to G. W. Peckham's account. I am of the opinion that that was the check deposited.

Check dated April 11, 1928, No. 706, payable to the order of G. W. Peckham, $169.75, signed Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank, indorsed G. W. Peckham. Paid April 11, 1928. On the same date a deposit of $169.75 for G. W. Peckham's account. I am of the opinion that that was the check so deposited.

Check dated April 20, 1928, No. 710, payable to the order of the City National Bank, $1,850.00, signed Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank. Paid April 23, 1928. On the same date deposit to G. W. Peckham's account for $1,850.00. I am of the opinion that that was the check deposited.

Check dated April 30, 1928, No. 713, payable to G. W. Peckham for $400.00, signed Wichita Royalty Company, by E. E. Scannell, drawn on the City National Bank, indorsed G. W. Peckham. Paid May 1, 1928. On the same date a deposit to G. W. Peckham for $459.00. There was a $400.00 check listed, on this deposit, and I am of the opinion that that was the check.

572 May 21, 1928, check No. 718, payable to G. W. Peckham, for $140.68, signed Wichita Royalty Company by E. E. Scannell, and drawn on the

City National Bank, Wichita Falls, indorsed G. W. Peckham, paid May 21, 1928. The same date a deposit to G. W. Peckham's account for $140.68, and I am of the opinion that that was the check deposited.

Check dated May 31, 1928, No. 720, payable to the order of G. W. Peckham, $400.00, signed Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank, indorsed G. W. Peckham, paid June 12, 1928. Deposit on the same date to G. W. Peckham for $400.00. I am of the opinion that that was the check deposited.

Check dated July 2, 1928, No. 727, payable to the order of G. W. Peckham, for $400.00, signed Wichita Royalty Company by E. E. Scannell, and drawn on the City National Bank, indorsed G. W. Peckham. Paid on July 9, 1928. July 9, 1928, there is a deposit to G. W. Peckham's account for $1,900.00, check of $400.00, Wichita Royalty Company listed thereon, that check was deposited to that account.

Check dated July 31, 1928, No. 738, payable to the order of G. W. Peckham for $400.00, signed Wichita Royalty Company by E. E. Scannell, on the City National Bank, indorsed G. W. Peckham. Paid August 7, 1928. The same day there was a deposit of $400.00 to G. W. Peckham's account, and I am of the opinion that that was the check deposited.

573 Check dated August 21, 1928, No. 747, for $400.00, payable to G. W. Peckham, signed Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank and indorsed G. W. Peckham. Paid September 10, 1928. There was a deposit on September 10, 1928, to G. W. Peckham's account for $4,744.25. Wichita Royalty Company check was listed therein. That check was deposited to G. W. Peckham's account.

Check dated September 27, 1928, No. 452, payable to the City National Bank, for $424.66, signed Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank. Notation on the back, "Deposited in the City National Bank Wichita Falls, to the credit of G. W.

Peckham." That was credited to his account on September 27, 1928.

Check dated October 1, 1928, No. 754, payable to the order of G. W. Peckham, for $400.00, signed Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank, indorsed by G. W. Peckham. Paid October 12, 1928. That check was deposited to his account on October 12, and a deposit totaling $600.00.

Check dated October 31, 1928, No. 762, payable to G. W. Peckham, $400.00, signed Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank indorsed G. W. Peckham. Paid November 1, 1928. Deposited to G. W. Peckham's account November 1, 1928, together with other checks totaling $1,015.00.

Check dated November 30, 1928, No. 767, payable to G. W. Peckham for $400.00, signed Wichita
574 Royalty Company by E. E. Scannell, drawn on the City National Bank, indorsed G. W. Peckham. Paid—I cannot read the cancellation on this—but that was deposited to G. W. Peckham's account on November 30, 1928.

Check dated December 31, 1928, No. 775, payable to the order of G. W. Peckham for $400.00, signed Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank, indorsed G. W. Peckham. December 31, 1928, the check was paid by deposit on the same date, $400.00, to G. W. Peckham's account. No other identifications other than the same teller handled both items, and I am of the opinion that that was the check so deposited.

Check dated January 30, 1929, No. 785, payable to G. W. Peckham, for $400.00, signed Wichita Royalty Company, by E. E. Scannell, drawn on the City National Bank, indorsed G. W. Peckham. Paid on February 5, 1929. Deposited to G. W. Peckham's account on the same day.

Check dated March 1, 1929, No. 793, payable to the order of G. W. Peckham, $400.00, signed Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank, indorsed by G. W. Peckham, deposited to the account of G. W. Peckham on March 8, 1929.

Check dated March 26, 1929, No. 797, payable to the order of G. W. Peckham for $400.00, signed Wichita Royalty Company by E. E. Scannell, on the City
575 National Bank, indorsed G. W. Peckham. Paid on March 26, 1929, and deposited on the same day to G. W. Peckham's account.

Check dated April 30, 1929, No. 806, payable to G. W. Peckham, for $400.00, signed Wichita Royalty Company, by E. E. Scannell, and drawn on the City National Bank, indorsed G. W. Peckham. Paid on May 1, 1929, deposited to G. W. Peckham's account on the same day.

Check dated May 31, 1929, No. 813, payable to G. W. Peckham for $400.00, signed Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank, indorsed G. W. Peckham, paid on May 31, 1929, and deposited to G. W. Peckham's account on that date.

Check dated July 31, 1929, No. 829, payable to G. W. Peckham for $400.00, signed Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank, indorsed G. W. Peckham. Paid August 2, 1929, and deposited to G. W. Peckham's account on the same day.

Check dated July 1, 1929, No. 821, payable to G. W. Peckham for $400.00, signed Wichita Royalty Company, by E. E .Scannell and drawn on the City National Bank indorsed G. W. Peckham. Paid on July 9, 1929. Deposit on the same day for $400.00 to G. W. Peckham's account. Both of those items were handled by the same teller, and I am of the opinion that that was the check so deposited.

576 Check dated August 30, 1929, No. 837, payable to the order of G. W. Peckham, $400.00, signed Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank, indorsed G. W. Peckham. Paid on September 5, 1929, and deposited to G. W. Peckham's account on the same date, together with other checks, making a total of $481.50.

Check dated September 30, 1929, No. 843, payable to the order of G. W. Peckham for $400.00, signed Wichita Royalty Company, by E. E. Scannell, drawn on the City

National Bank, indorsed G. W. Peckham. Paid October 2, 1929, and deposited to his account on that date.

Check dated October 31, 1929, No. 852, payable to the order of G. W. Peckham for $400.00, signed Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank, indorsed G. W. Peckham. Paid November 1, 1929. Deposited to G. W. Peckham's account on that date.

I have been testifying from the original canceled checks of the Wichita Royalty Company that were charged against the Wichita Royalty Company's deposit account with the City National Bank of Wichita Falls, Texas. The first checks this morning were the Security National Bank's. The checks of the Wichita Royalty Company have printed on their back "Indorsement hereon by the payee constitutes acknowledgment of full payment of the items listed on accompanying remittance statement. No other receipt required." Each of these checks shows to have been perforated at its top. That could
577 mean that the check was drawn out of a check book. None of those checks have perforations at either end, nor does it have perforations at the bottom. We have had check books where they were torn out at the top, and where they were torn out on the end, we do not have any of those now. They are not glued at the top like a counter check, they are perforated. As a check of a business firm, it would reasonably indicate that that was a voucher check. In describing these checks, I have said they were drawn by the Wichita Royalty Company by E. E. Scannell, or G. W. Peckham, as the facts were. After the signature of E. E. Scannell, on all of the checks that he signed, appeared the words, "for the trustee." The word "for" was written on there, some of them. In the early part of the history of these transactions, the word "for" was written in ink, and in the latter history the words "for trustee" was printed on there. Originally it was printed "Wichita Royalty Company by trustee," and a place left for the signature. This was during the period of time which Mr. Scannell wrote the word "for trustee."

I have here a contract signed by the Wichita Royalty Company by G. W. Peckham trustee, and the petroleum Royalties Corporation by Thomas H. White, agent.

Mr. Rogers:
We offer it in evidence.

(Marked "Defendant's Exhibit 16" as follows:)

578 DEFENDANT'S EXHIBIT 16.

The State of Texas,
County of Wichita.

This Sale Agreement and Escrow Contract entered into by and between the Wichita Royalty Company, a trust estate, acting herein by its duly authorized trustee, G. W. Peckham, hereinafter referred to as party of the First Part, and the Petroleum Royalties Corporation, acting herein by its agent, J. H. White, hereinafter referred to as party of the second part.

Witnesses:

The party of the first part is the owner, insofaras covered by this contract, of one-eighth of the one-eighth fee royalty being oil, gas and other minerals in and under and that may be produced from the following described land situated in Archer County, Texas:

Lots Number Thirteen (13) and Number Fourteen (14) in Block Twenty-seven (27) of the American Tribune New Colony Subdivision, as shown by the map or plat of the Deed Records of Archer County, Texas.

And the party of the first part hereby agrees to sell to the party of the second part an undivided one-eighth of the one-eighth fee royalty, as more particularly set out in the deed hereto attached and made a part hereof, and has executed a deed of conveyance to the party of

the second part, and in consideration of which the party of the second part hereby binds and obligates
579 itself to pay to the party of the first part the sum of Six Thousand Dollars ($6000.00), as follows:

Twenty Four Hundred Dollars ($2400.00) in cash, upon the execution of this contract, the receipt of which is hereby acknowledged.

Twelve Hundred Dollars ($1200.00) on or before December 25th, 1927.

Twelve Hundred Dollars ($1200.00) on or before January 25th, 1928.

Twelve Hundred Dollars ($1200.00) on or before February 25th, 1928.

Said three deferred payments are evidenced by promissory notes of the party of the second part, payable to the party of the first part dated November 25th, 1927, bearing interest from date at the rate of 8% per annum and the party of the second part agrees to execute these notes and place same in escrow with this contract. This contract, together with the deed of conveyance from the party of the first part to the party of the second part and the three notes above set out are to be placed in escrow in the City National Bank of Wichita Falls, Texas, which bank is hereby designated the escrow holder.

It is understood and agreed that the oil runs are to be collected by G. W. Peckham, Trustee, as above set out and turned over as collected to the party of the second part, provided no default has been made in the payment of any said three notes or interest by the party of
580 the second part. As said notes are paid by the party of the second part, the proceeds thereof are to be delivered to the party of the first part and when

all of said notes and interest have been paid, according to their reading, tenor and effect then the escrow holder is authorized to turn over the deed to the party of the second part. However, should the party of the second part refuse or fail to perform under this contract or pay any or all of said notes and interest as they become due, then the money paid to the party of the first part shall be held by it as complete liquidated damages, together with the return of the deed to the first party, and the party of the first part agrees to accept same as complete liquidated damages and the escrow holder, the City National Bank, is hereby authorized to redeliver to the party of the first part its deed of conveyance to the party of the second part and to return to the party of the second part any of the unpaid notes and this contract shall be at an end and of no further force or effect.

It is understood and agreed that the party of the second part is to receive the oil produced to the interest hereby conveyed as of 7:00 A. M. November 25th, 1927.

It is understood and agreed that the royalty hereby conveyed expires on March 1st, 1939, according to the reservation in the mineral deed from L. F. Wilson to G. W. Peckham dated March 8, 1924 and recorded in Volume 85, page 437, of the Deed Records of
581 Archer County, Texas, to which reference is hereby made for all purposes.

This contract being mutual, it is executed in triplicate this 25 day of November, A. D. 1927.

WICHITA ROYALTY COMPANY,
By G. W. PECKHAM, Trustee.
PETROLEUM ROYALTIES CORPORATION,
By JAMES H. WHITE, Agent.

The stipulations of this contract having been complied with to the satisfaction of all parties hereto insofar as

the City Nat'l Bank, Escrow Agent, is concerned, we hereby each and jointly release the City Nat'l Bank, Escrow Agent, from any further liability and declare escrow closed this the 28 day of February, 1928.

WICHITA ROYALTY CO.,
By G. W. PECKHAM, Trustee,
Party of the first part.
PETROLEUM ROYALTIES CORP.,
By JAMES H. WHITE, Agent,
Party of the Second Part.

Received of the City Nat'l Bank, Escrow Agent, Mineral Deed herein referred to, this the 28 day of February, 1928.
(Signed) JAMES H. WHITE.

582 Received 1208.00 1-9-28 Note #1.
WICHITA ROYALTY COMPANY,
By G. W. PECKHAM.

Received 1216.00. 1-25-28 Note #2.
WICHITA ROYALTY COMPANY,
By G. W. PECKHAM.

Received 1224.00. 2-28-28.
WICHITA ROYALTY COMPANY,
By G. W. PECKHAM, Trustee.

583 The Witness:

I have G. W. Peckham's deposit account here before me, on January 9, 1928 there is a credit of $1,200.00. It does not say from where the funds were derived. This says, "Received $1208.00." I do not have any idea as to the source of that amount of money. That is evidently an out-of-town check from the number on it. I will get you that information during the taking of this testimony. In addition to the $1200.00 deposit on January 9, 1928, I likewise find a deposit to his account on January 25, 1928, of $1,224.00; on February 29, 1928, $1,224.00; on

December 5, 1927, $2,400.00. This contract was executed in triplicate, the 25th day of November, 1927. The escrow check is dated December 5, 1927. This is just an envelop where it was kept and filed. This is the original record of the bank, you understand they put them in an envelop and keep them, for convenience. I will look up and testify later as to the source of those deposits to the account of G. W. Peckham, totaling $6,048.00, and analyze that escrow and be in position to tell whether or not from my investigation of the books and records of G. W. Peckham, out of the bank, whether or not those deposits are not the items that cleared through that escrow.

On February 15, 1928, $6,000.00 was deposited to the account of G. W. Peckham. There is no mark of identification on the deposit slip to show that a $6,000.00 cashier's check issued by the Wichita State Bank, payable to the order of W. C. Duncan, was deposited. The item was handled by both the cashier's check and the de-
584 posit, was handled by the same teller, and I would be of the opinion that that was the item. Mr. Peckham's indorsement is the last one upon the cashier's checks. The check is on the Wichita State Bank and Trust Company, cashier's check No. 12,328, payable to the order of W. C. Duncan, for $6,000.00, signed by W. L. Stewart Gill, Assistant Cashier, and indorsed payable to the order of G. W. Peckham, for Bristow Royalty, W. C. Duncan. Second indorsement, G. W. Peckham. It cleared through the City National Bank. It cleared on February 16, 1928, by the City National Bank and paid by the Wichita National Bank on February 16. 1928, the date of the check was February 6. It is my opinion that that item was deposited to the personal account of G. W. Peckham on the 15th of February, 1928. So far as I know, there was no escrow in our bank for that item, on the sale of that Bristow Royalty.

On June 22, 1923, G. W. Peckham paid personal indebtedness to the bank, $3,050.60. On April 1, 1924, G. W. Peckham owed the bank $7,048.07, and that was the same balance as of May 1. On March 18, 1924, Mr. Peck-

ham gave a check for $10,000.00, payable to the order of note, signed by Mr. Peckham. On March 18, 1924, he gave his check for $10,000.00, payable to the note department for payment of a note. That was credited to his personal liability to the bank, on March 17. On March 18, he issued his check to the note department for $10,026.75, and that was credited on the note of W. H. Peckham, No. 47,675. On March 7, 1924, the City National Bank loaned to W. H. Peckham, $10,000.00. On March 6, the bank
585 loaned G. W. Peckham $10,000.00; the records do not indicate the indorsements those notes bore. On March 17, there was a credit to the account of G. W. Peckham for $20,000.00. When that loan of March 6, to G. W. Peckham was made for $10,000.00, he did not owe the City National Bank any money. That credit consisted of a note of $10,000.00 for W. H. Peckham and a note of $10,000.00 for George Peckham. On the 6th day of March, one $10,000.00 note was executed and signed by one of the brothers, and on the next day a $10,000.00 note was executed and signed by the other brother, and the proceeds of the $20,000.00 loan was both deposited to the personal account of G. W. Peckham. Then on March 17, he paid $10,000.00 on one of those, and on March 18, he paid $10,000.00 on the other. On November 3, 1924, G. W. Peckham paid to the plaintiff bank $5100.00 upon his private debt. On May 12, he paid out of his personal account, $4,056.00 to the City National Bank on a debt to that bank. On June 11, 1925, he paid $66.67. I also have Mr. Peckham's check dated September 23, 1925, payable to the Highland Irrigation Company for $3,869.25, signed G. W. Peckham, paid by City National Bank, and paid September 24, 1925, indorsed Highland Irrigation Company. I do not have access to the books and records of the Highland Irrigation Company. I do have to the Marlborough Addition; and the Texas Investment Company. The Highland Irrigation Company is the company that these Marlborough purchasers and developers executed vendor liens to. From my investigation, I am not certain this $3,800.00 payment was made up-

586 on that obligation, I am not positive whether that was a down payment or a note, or what the particular item was for, I just know it was paid to the Highland Irrigation Company. I will be glad to look it up.

On January 5, 1925, I have a check payable to the Highland Irrigation Company for $812.00, signed by G. W. Peckham. This was for something personal he had bought from the company, the notation says upon four notes, $175.00, total $700.00. Interest on series $112.00. And Lots 11, 12, 13, 14, Block 44a, payable to Highland Irrigation Company, indorsed "pay to J. A. Kemp, Highland Irrigation Company by C. M. Crowell." The further indorsement, "pay City National Bank of Commerce, Wichita Falls, Texas, or order, J. A. Kemp, No. 76." I have a check dated January 11, 1926, payable to the Highland Irrigation Company, $454.50, signed G. W. Peckham. That was paid on January 12, 1926, and indorsed "Pay to the order of City National Bank, Wichita Falls, Texas, Highland Irrigation Company." That check is in the handwriting of J. T. Harrell, other than the signature, that was a payment on that land out there. If I understand it correctly, they bought two tracts of land out there and this was the original purchase on one of the tracts, that is the way I understand it from my examination. Mr. Peckham paid the bank out of his deposit account, $550.00 on May 15, 1926, by check dated May 14, 1926, payable to interest, $550.00, signed by G. W. Peckham. That was paid on May 15, 1926, and was interest on part of

587 his notes at that time. On August 10, he made a similar payment. On January 19, 1927, he paid $2,506.12. There was a check charged to his account on January 19, 1927, for $2,506.12, payable to "yourselves". On March 16, he paid the bank $1,500.00, out of his personal account. On October 19, 1927, he gave his check for $1,336.00, that was payable on note, $1,076.00, interest $260.00, that was paid on the note of Wichita Royalty Company on that date. The $520.00 check was payable to his personal obligations, October 19. Those checks being drawn against his personal account. On September

27, 1928, he paid $3,163.78, it was charged paid out of his personal account. He also paid his personal check on the note of Wichita Royalty Company for $424.66. I have a check dated November 1, 1928, payable to note interest, $4,200.00. $4,200.00 was credited to the account of Reverend J. W. Sweeton, for a note he owed. That is the Methodist preacher. I don't know whether that note was in the bank or not, but it was not a note of the City National Bank. I do not have any record of that note of any character whereby I could determine the dates or the rate of interest or the amount payable or the indorsements. Mr. Sweeton had a deposit account with our bank about that time. I have checked the deposit slips, and determined that the $4,200.00 was deposited to his credit. The check itself is written in Mr. Harrell's handwriting. Reverend Sweeton is the father of Mrs. Gest and W. J. Sweeton an attorney, and Clyde Sweeton, of Houston.

I have an amount here also, $2,013.33, dated
588 January 12, 1929, the check was paid on that date, that applied on the indebtedness to the City National Bank.

I have here a check dated March 10, 1923, No. 1253, payable to the order of City National Bank for $2,500.00. Drawn on the City National Bank by the Wichita Royalty Company, signed E. E. Scannell for trustee. On the back it says, "Credit to the account of B. L. Fain." On March 10, B. L. Fain's account was credited with $2,500.00. In my opinion, that is the same item.

I have a check here dated December 28, 1925, 451, payable to the order of the City National Bank for $1,250.00, drawn on the City National Bank by Wichita Royalty Company, signed E. E. Scannell for trustee. On the back, "credited to the account of G. W. Peckham." Deposited for the same account on the same day. I am sure that is the check that was deposited.

Check dated December 22, 1926, No. 556, payable to the order of G. W. Peckham for $700.00, drawn on the City National Bank of Wichita Falls, signed by E. E. Scannell for trustee, indorsed G. W. Peckham. I could not tell you

what happened to the money on that. Evidently it was cashed, because the account did not have a credit. The check is dated 12-22-26. I will look it up in the record and see if I can find out what became of the proceeds of that check.

Here is another one dated December 22, 1926, No. 556-a, payable to the order of G. W. Peckham for $538.16, drawn on the City National Bank by the Wichita Royalty Company, signed by E. E. Scannell for trustee, and indorsed G. W. Peckham. This check was paid on January 4, 1927. There is an item for the same amount in his deposit, the deposit slip dated January 3, 1927, and I am of the opinion that that is the same check deposited to that account.

589

I have a check dated December 7, 1926, No. 557, payable to the order of the City National Bank for $1,920.00, drawn on the City National Bank by Wichita Royalty Company signed by E. E. Scannell for trustee. It was in payment of a draft received from the Texas State Bank at Eastland, Texas, for $1,920.00. Notation, "description, draft papers attached, G. W. Peckham." It was City National Bank's collection No. 1,658. Received by the bank on October 3, 1926, and paid December 15 1926. Papers attached thereto. This notation says, "Draft with papers attached," and this mineral deed is signed by Joseph M. Perkins, and comes from the county of Eastland, and conveying all of section 54, W. D. Twitchel, map of sub-divisions of the Bravo Ranch Lands, located in Hartley County, Texas, containing 640 acres more or less, and it was for an undivided 1/16 of all oil and gas produced, or that may be produced. The conveyance named G. W. Peckham as grantee. It is my opinion that that is the instrument that was attached to the draft so drawn, and that the $1,920.00 check of Wichita Royalty Company took up that item.

In connection with the item of $1,920.00, that represented the purchase of a draft drawn by Joseph M. Perkins, on G. W. Peckham for a conveyance of 1/16 royalty in the Hartley County Land, and

590

Judge Rogers has exhibited to me a mineral deed, the original, taken from the files of the Wichita Royalty Company, conveying this interest in the minerals to G. W. Peckham, dated the 7th day of August, 1926.

Re-Direct Examination.

By Mr. Humphrey:

The instrument which you now hand me is another mineral deed taken from the files of the Wichita Royalty Company, conveying the identical interest received by G. W. Peckham, in the identical land, signed by G. W. Peckham, on the same date, to-wit, August 7, 1926, and acknowledged on the 15th day of December, 1926, conveying to the Wichita Royalty Company this identical interest. I have traced the funds from the books of the Wichita Royalty Company to see that that is the same, that the Wichita Royalty Company paid $1,920.00 for that interest, it was handled by the same teller.

Q. Does the voucher of the Wichita Royalty Company show that the Wichita Royalty Company paid—get the copy of the voucher on that transaction.

Mr. Rogers:

The Wichita Royalty Company, and its trustee, object and except to the evidence now submitted by counsel for the bank and parties other than the Cross complainant; for the reason that the matters sought to be introduced in evidence, affirmatively show upon
591 their face that the transactions between the Wichita Royalty Company and G. W. Peckham involves a dual dealing between the trustee as an individual, and himself as trustee, at a time long subsequent to his original acquiring of the property. The subject matter being minerals, and the value thereof being judicially known to be fluctuating, the deed to G. W. Peckham conveying, being acquired on or about August 7, 1926, and the conveyance by G. W. Peckham to the Royalty

Company, though dated as of the date of the prior dealing, yet not being acknowledged until December 15, 1926, months after his having acquired personally the interest, so that not alone is the instrument to the trust not binding upon it, because of the personal interest therein of the trustee himself, but as well because he bought it as an individual, rode the transaction for months, and then it appeared to him to be to his best advantage, conveyed it to his trust, to liquidate a charge which he had theretofore made to the books of the company, being $1,920.00, and thus make the books balance; which testimony is made applicable to the testimony offered by the bank, and that which may be subsequently offered in respect thereto.

Mr. Morrow:

In respect to that, the draft shows, that it came in in October, 1926, but the records also show that all these facts were fully known by the Royalty Company, as disclosed by their bocks and records, in 1926, and no complaint was made at the filing of the amended bill.

592 Mr. Rogers:

For the further reason, it is not shown that G. W. Peckham ever disclosed to any stockholder of the Wichita Royalty Company any facts relating thereto, and that no stockholder knew of the existence of such deed; and that the stockholders were not otherwise bound thereby, by ratification, estoppel or other proper defense.

(Which objection was by the Court overruled, to which the defendant, Wichita Royalty Company, then and there excepted).

This says in payment of full one-half royalty, 640 acres in Hartley County. The voucher is dated December 7, 1926, the same date as the check. I received this information from the copy of the voucher kept by the Wichita Royalty Company, from the original books. The draft

shows to have been paid December 15, 1926. It shows that it was accompanied by a transfer from Perkins to Peckham. As to the file marks of the county clerk of Hartley County on these documents, assignment from Joseph M. Perkins to G. W. Peckham, was filed for record December 31, 1926, at 9:00 o'clock A. M. by A. B. Colinder, County Clerk, Hartley County, Texas, by R. A. Defee, Deputy. Assignment G. W. Peckham, Wichita Royalty Company filed December 31, 1926, at 9:00 A. M. by the same county clerk and by the same deputy, indicating that they both were received on the same day in the same mail, and filed at the same time.

Mr. Humphrey:

In connection with this instrument, we offer in evidence a draft, memorandum of the draft, and we would like to offer in evidence the original copy of the voucher.

593 PLAINTIFF'S EXHIBIT No. 39. 1

"City National Bank.

16158.

Wichita Falls, Texas ....., 192..

Received the following items listed for collection from:
Texas State Bank,
Eastland, Texas.

CITY NATIONAL BANK.

10/5/26.

Your Letter Date or No.	Description	Amount
156 10/4/26	Dft. Papers Atcd. G. W. Peckham..	1,920.00

(On the above mentioned instrument appears the following stamp):

"City National Bank, Paid Dec. 15, 1926, 16. Wichita Falls, Texas."

The Witness:
That is the copy of the voucher that accompanied the check of $1,920.00, inquired about.

Mr. Humphrey:
We offer it in evidence.

594 (Marked "Plaintiff's Exhibit 40," and reading as follows:)

PLAINTIFF'S EXHIBIT No. 40.

"Wichita Royalty Company,
Wichita, Falls, Texas. No. 557.
December 7, 1926.

When Properly Indorsed Pay to the Order of City National Bank $1,920.00, Exactly Nineteen Hundred Twenty Dollars No Cents.

WICHITA ROYALTY COMPANY,
By E. E. SCANNELL,
For Trustee."

To The City National Bank,
88-1899 Wichita Falls, Texas.

(The above check bears the following stamp):

"City Natl Bank, 16, Wichita Falls, Texas."

(The above check bears the bank's perforated cancellation stamp as follows):

"Paid 12 15 26."

Mr. Humphrey:
Also offer in evidence the two deeds.

(The two deeds marked "Plaintiff's Exhibits 41 and 42 and reading as follows:)

595 PLAINTIFF'S EXHIBIT No. 41.

Assignment, Joseph M. Perkins, to G. W. Peckham.

Consideration, $10.00 and other valuable considerations.

Conveying 1/16 of all oil and gas produced or that may be produced on the following described land, to-wit:

All of Section No. 54, as the same is shown by the W. D. Twitchell map of the sub-divisions of the Bravo Ranch lands, located in Hartley County, Texas, containing 640 acres.

Lease to remain in force for five years after August 7, 1926, unless oil and gas, either of them, are being produced from said lands in paying quantities and as long thereafter as same is being produced.

Dated August 7, 1926.

Duly acknowledged by Joseph M. Perkins, before J. L. Cattingham, Notary Public in and for Eastland County, Texas, on the 29th day of September, 1926.

Filed for record December 31, 1926, at 9:00 o'clock A. M. and recorded December 31, 1926, at 11:30 o'clock A. M. in the deed records of said county in Vol. 55, on Page 539.

PLAINTIFF'S EXHIBIT No. 42.

G. W. Peckham, Wichita Falls, Texas, party of the first part, Wichita Royalty Company, Wichita County, Texas, party of the second part.

596 Consideration $10.00 and other valuable considerations.

Conveying 1/16 of all oil and gas produced or that may be produced from the above described land, to-wit: All of Section 54, as the same is shown by the W. D. Twitchell map of the sub-divisions of the Bravo Ranch lands, located in Hartley County, Texas, containing 640 acres, more or less.

Lease to run for a period of five years from August 7, 1926, unless at the expiration of said period of time oil and gas or either of them, are being produced from the land in paying quantities.

Dated August 7, 1926.

Duly acknowledged by G. W. Peckham, before H. C. Richardson, Notary Public in and for Wichita County, Texas on December 15, 1926.

Filed for record December 31, 1926, at 9:00 o'clock A. M. and recorded December 31, 1926, at 11:45 o'clock A. M. in the deed records of said county, in Volume 55, on page 540.

The Witness:

I have examined the books and records of the Wichita Royalty Company with the consent of the Wichita Royalty Company; included in the books and records is the copy of the voucher that I have testified about, the originals of which apparently on which the checks were issued. This copy of the voucher which I have read from is a correct copy of what the originals of the books of
597 the Royalty Company show. The books of the Wichita Royalty Company disclose their property, they have kept their property in an envelop and they were numbered, their deeds and all, if I remember correctly. I examined that envelop in the possession of the

auditor of the Wichita Royalty Company. That is known as property No. 94, it is listed as an asset of the Wichita Royalty Company, when I examined the books and records of the company. All these matters were found in the office of the Wichita Royalty Company that I have testified about, with reference to the deeds, copies of the voucher, the original checks that I have testified about, with the exception of the memorandum on the draft. I made this investigation since this suit has been pending in the Federal Court, or at least since its reversal by the Supreme Court of Texas, in 1935. I knew nothing about how it was handled prior to that time.

Re-Cross Examination.

By Mr. Rogers:

When I said apparently a voucher was attached to the check, I meant on examining the records of the Wichita Royalty Company that they kept a voucher of all of their checks. I do not know whether a voucher was attached to the check when it was honored by the bank or not. This draft drawn on G. W. Peckham, attached to which was a conveyance to G. W. Peckham lay unhonored in the bank here, from October 4, 1926 to December 15, 1926, and the man on whom it was drawn did not pay
598 it off during that time. I do not know whether a well was drilling during that time, in the vicinity of this property or not.

Mr. Rogers:

We renew our objections heretofore made, and make them specifically applicable to all the testimony listed by counsel for the bank, and move to strike the same for the reasons above shown.

The Witness:

The next check dated April 11, 1927, No. 598, payable to the order of B. L. Fain for $500.00, drawn on the City

National Bank by the Wichita Royalty Company, signed by E. E. Scannell for trustee, indorsed by B. L. Fain, cleared by Security National Bank on April 12, 1927, and paid by the City National Bank on the same date.

The next check dated December 20, 1927, No. 670, payable to the order of G. W. Peckham for $147.33, drawn on the City National Bank, Wichita Royalty Company, signed by G. W. Peckham trustee, indorsed G. W. Peckham. I have a deposit slip to the account of G. W. Peckham on December 21, 1927, for $147.33. I am of the opinion that that is the check so deposited.

The next check dated January 14, 1929, No. 778, payable to the order of G. W. Peckham for $21.63, drawn on the City National Bank by the Wichita Royalty Company, signed by E. E. Scannell, for trustee. It is indorsed G. W. Peckham. I presume that was cashed. There is no deposit to his account. It was cashed by teller No. 8. That is just my idea about it, there is no deposit for it. The check was paid on February 5.

599 The next check dated November 29, 1929, No. 857, payable to the order of Knight and Hines for $84.41, drawn on the City National Bank by Wichita Royalty Company signed by E. E. Scannell for trustee. Indorsed Knight and Hines, and paid on November 29, 1929. So far as I know that went to the credit of Knight and Hines. I imagine that went to the account that had purchased and was paying the indebtedness incurred in the purchase of the Porter Ranch, between Harrell and Peckham and Knight and Hines, but I would have to look it up to see.

The next is a check dated January 24, 1930, No. 880, payable to the Marlborough Addition for $1,500.00, drawn on the City National Bank by Wichita Royalty Company by E. E. Scannell for trustee, indorsed Marlborough Addition, Texas Investment Company of Wichita Falls, that was after the death of Mr. Peckham. That was deposited to the Texas Investment Company on January 25, 1930.

The next check dated May 13, 1930, No. 908, payable to the Texas Investment Company of Wichita Falls,

Texas, for $500.00 drawn on the City National Bank by Wichita Royalty Company, signed by E. E. Scannell for trustee, and on the back of it says, "Credit Texas Investment Company." That check was paid on May 14, 1930, and credited to the Texas Investment Company of Wichita Falls on the same date.

The next is a check dated December 17, 1930, No. 970, payable to the order of W. T. Knight, attorney-in-fact, for $102.83. Drawn on the Security National
600 Bank, signed by Wichita Royalty Company by E. E. Scannell for trustee. It is indorsed "W. T. Knight, attorney-in-fact, Knight & Hines, by A. H. Heron." That is all the checks I have here at this time.

I have before me a deposit ledger account of L. F. Wilson Company, March, 1924. On March 6, 1924, G. W. Peckham issued his check to L. F. Wilson for $20,000.00, paid by the City National Bank, March 7, 1924. It says, "Credit L. F. Wilson by J T. Young." Those figures below the indorsement in the amount of $2,017.74, means that the check was insufficient, and that was his balance. I mean by that, on March 6, the day the check came in, Mr. Peckham did not have that much money on deposit, and that $2,017.74 reflected the balance that he did have at that particular time, that check was deposited to the account of L. F. Wilson on March 6, 1924, the deposit slip reads, "$20,000.00 less cash, $1,000.00 given to the account of L. F. Wilson, credit for $19,000.00." That is shown on the deposit slip March 6, 1924. On March 7, that $20,000.00 deposit was made to the account of G. W. Peckham; that paid the overdraft and left an overdraft at the close of business that day of $1,917.74. That deposit of $20,000.00 to the account of G. W. Peckham consisted of a $10,000 note of George Peckham and a $10,000.00 note of W. H. Peckham. These moneys were deposited to the account of G. W. Peckham to liquidate that overdraft.

I have been with the plaintiff bank since November 23, 1923.

I have not been able to locate any financial
601 statement given by George Peckham to the bank in his lifetime, although such statement might have been given and withdrawn from the files, however I have looked through everything I can think of. I have available a little memorandum book of G. W. Peckham wherein he made certain statements in respect to the Gray and Wheeler County Royalties. This book says that it is a ledger. It is more or less a memorandum book of Mr. Peckham's that was loaned to us by W. H. Peckham, the administrator of his estate. It starts out here with office expense, lease, salary, stenographer's salary half expense of storage, etc., various transactions.

From my investigation I would say that Mr. Peckham did not keep a complete set of books.

On page 110 of this memorandum is a notation dated April 2, 1926, that is, it is under that date, I do not know whether that was the date of this transaction or not.

Mr. Rogers:

We offer in evidence that part of the book identified, beginning on Page 110, with the date line 4-2-26, and concluding with $10,600.00 on page 111, as follows:

"3-1-26, profit on Marlborough lots, $4,200.00.

"4-2-26, Paid B. L. Fain $1,000.00 for interest in dry hole, Okla. lease.

"Bought Kilgore royalty, Brown County, for $7,500.00, paid Britain commission of $750.00. Sold for $10,000.00. Profit $1,750.00.

"Bought Wheeler County Royalty for $44,800.00, as follows:

602 "Webb, $5,600.00.

"Johnson, $4,000.00.

"Noal, $5,000.00.

"Section 57, $8,400.00.

"Section 43, $2,000.00.

"Section 44, $4,000.00.

"Plumber, $8,000.00.
"Section 12, $8,000.00.
"Sold to Tolowa, $30,500.00.
"Sold Joe Art, $1,000.00.
"Sold J. T. Harrell, $1,000.00.
"Sold United Royalties $20,000.00.
"Sold balance to Wichita Royalty Company, $10,000.00, which was exact cost.
"Paid Scannell $600.00 profit.
"B. L. Fain, $6,500.00 commission on sale to United.
"Net profit $10,600.00."

The Witness:

According to the way we figure it, the property bought as shown by that memorandum and not conveyed to the Wichita Royalty Company or to Joe Art or Mr. Harrell or to the Tolowa Royalty Company, there is a balance of 1/512ths interest, and a royalty transferred by H. B. and Opal Hill. That is all of the west half of the southeast corner of Section 43, in Block 24, H. & G. N. R. R. Company survey, containing eighty acres of land more or less. As to that interest just described, the deed 603 is dated October 20, 1926, conveying 1/32nd interest. He sold all of that to other people except 1/512th, which he retained in his own name, the balance of which he conveyed to others. Aside from this small interest I have spoken of, I know of no other interest in the name of G. W. Peckham, in Gray and Wheeler County, Texas. It had been partly checked and we are trying to get a complete check of the balance of it now.

I have here another matter you have asked me about; on February 5, 1923, Mr. Peckham paid, upon his indebtedness to the bank $594.75. On March 5, 1923, he paid from that account $1,000.00 to the plaintiff bank on a note. On March 6, 1923, he paid his personal note to the bank, $500.00. On March 7, 1923, he paid upon his note to the bank, $500.00, the same amount on March 8, 1923. On April 23, 1923, he made another payment upon his note of $4,000.00 principal and $94.15. On May 14, 1923, he

made a payment to the bank of $1,008.65 on his personal note. On May 19, 1923, he made a payment upon his note to the bank of $889.66. On June 22, 1923, he paid $3,050.60 upon his personal indebtedness to the plaintiff bank, that was $3,000.00 principal and $50.60 interest. On August 10, 1923, he paid $3,985.78, to the plaintiff bank upon his personal indebtedness. On November 13, 1923, he paid $1,000.00 to the plaintiff bank out of his personal account upon his personal indebtedness to the bank. On November 20, 1923, he paid the plaintiff bank $2,000.00 out of his personal account upon his personal
604 indebtedness to the plaintiff bank. On November 22, 1923, he paid $1,000.00 to the plaintiff bank out of his personal account upon his indebtedness to the bank. On November 30, 1923, he paid $1,555.82 to the plaintiff bank out of his personal account upon his personal indebtedness to the bank. On February 4, 1924, he paid out of his personal account to the plaintiff bank upon his personal indebtedness, $67.67 interest on his note. On February 21, 1924, he paid to the plaintiff bank $8,022.38, all of that was not on his personal indebtedness, however. It was upon a check made payable to the plaintiff bank, that was disposed of as follows, he paid principal on a note of $5,067.67, and he had a rebate of $45.29, that was his personal note; then he made a payment on the note of the Griswold Oil Corporation of $3,000.00, my investigation does not disclose why he made the payment upon that obligation. On March 17, 1924, G. W. Peckham paid to the plaintiff bank out of his personal account, $10,000.00 on his personal indebtedness to the bank. On March 18, 1924, G. W. Peckham paid out of his personal account upon the indebtedness of W. H. Peckham, $10,026.26, which liquidated a prior note that W. H. Peckham had executed, and the proceeds of which being deposited to the personal account of G. W. Peckham. So that having himself been credited in his personal account with the proceeds of the loan made by W. H. Peckham for $10,000.00, he liquidated that item by paying the plaintiff bank on March 18, 1924, the sum of $10,026.75. On May

1, 1924, G. W. Peckham paid out of his personal
605 account upon his personal indebtedness to the plaintiff bank the sum of $2,048.07. He also paid from the same account and upon his personal indebtedness to the bank, on June 7, 1924, the sum of $4,027.47; on the same day he made an additional payment of $1,000.00 upon an indebtedness to the plaintiff bank out of his personal account. On June 11, 1924, he paid out of his personal account to the plaintiff bank, upon his personal indebtedness to the plaintiff bank, the sum of $2,034.22. On June 3, 1924, he paid to the plaintiff bank, upon a debt due the City National Bank of Wichita Falls, Texas, the sum of $967.67, that was upon his personal note. B. L. Fain was not an indorser upon it, it was renewed by B. L. Fain the same day. G. W. Peckham paid $967.67 and the balance of it was paid by B. L. Fain upon B. L. Fain's executing a new note to the bank. On October 30, 1924, G. W. Peckham paid, from his personal account in the plaintiff bank, to the plaintiff bank, upon his personal indebtedness the sum of $12,500.00. The next payment that G. W. Peckham made upon his personal indebtedness to the plaintiff bank out of his private account was October 31, 1924, $5,100.00. That credit was entered on November 3, 1924, upon a check dated October 31, 1924, and paid November 3, 1924—that is the cancellation date of the check. His liability account was credited with the item November 3, the same day the check was canceled paid. On November 10, 1924, Mr. Peckham paid from his personal account to the plaintiff bank, upon his personal in-
debtedness, the sum of $200.00. On November
606 29, 1924, G. W. Peckham paid from his personal account to the plaintiff bank, upon his personal indebtedness the sum of $16,069.99. On December 12, 1924, G. W. Peckham paid to the plaintiff bank out of his private account upon his personal indebtedness to the bank, $12,016.00, on February 5, 1925, G. W. Peckham paid on his personal account to the plaintiff bank, upon his private debt, the sum of $10,200.00. On February 18, 1925, G. W. Peckham paid out of his personal account

to the plaintiff bank upon his private indebtedness, the sum of $16,210.00. On February 24, 1925, G. W. Peckham paid out of his private account with the plaintiff bank, $6,010.67, but he did not owe that indebtedness, that was indebtedness of the Tolowa Royalty Company. I don't know whether B. L. Fain was the trustee of that royalty company or not. I don't know whether that note was of long standing or not, neither do I know whether G. W. Peckham was an indorser upon the obligation. The check was made payable "to you". I presume that was the bank. On April 7, 1925, G. W. Peckham, from his personal account with the bank, paid to the plaintiff bank, upon items of indebtedness to the bank, two items, one for $80.00 and the other for $12,162.66, that was upon his personal note. On May 12, 1925, G. W. Peckham made a payment of $4,056.00 to the plaintiff bank by check drawn on his private account, in payment of a personal indebtedness to the plaintiff bank. On June 11, 1925, G. W. Peckham paid the plaintiff bank $66.57 on his personal indebtedness to the bank out of his private account.

607 On July 7, 1925, G. W. Peckham paid to the plaintiff bank upon his private indebtedness, out of his personal account with the plaintiff bank, the sum of $12,072.00. On June 6, was a $220.00 payment on interest, out of his personal account and paid on his personal indebtedness. On November 17, 1925, he paid the plaintiff bank, out of his private account with the bank, and upon his personal indebtedness to the bank, the sum of $1,007.23, which was applied against three notes, according to my record; one note No. 61,539, which was his. At that time, he had four different notes in the bank, Nos. 63,296 and 61,679, and 70,064, that number should be 61,539. All of those notes were notes of G. W. Peckham to the plaintiff bank, and they were consolidated and renewed under note No. 70,064, after crediting interest upon it of $1,007.23, on November 17, 1925. On February 13, 1926, G. W. Peckham paid from his personal account to the plaintiff bank, upon his private indebtedness the sum of $550.00. On May 14,

1926, he similarly paid to the plaintiff bank $550.00 upon his personal debt. On August 11, 1926, G. W. Peckham from his personal account, upon his personal indebtedness, paid to the plaintiff bank the sum of $550.00, that was interest on a $28,050.00 note. On September 30, 1926, Mr. Peckham paid from his personal account to the plaintiff bank upon his private indebtedness, the sum of $503.10. On November 10, 1926, he paid from his personal account to the plaintiff bank, upon his private indebtedness the sum of $3,050.00. That was upon
608 his note to the bank, No. 81,324, dated August 11, 1926. On December 8, 1926, he paid from his personal account to the plaintiff bank $500.00, on the Wichita Royalty Company note. On January 19, 1927, he paid from his personal account to the plaintiff bank upon his personal debt, the sum of $2,506.12. On March 16, 1927, he paid from his personal account upon his private debt to the plaintiff bank the sum of $1,500.00. On April 22, 1927, he paid from his personal account to the plaintiff bank, upon his private debt the sum of $10,963.75. On August 23, 1927, Mr. Peckham paid from his personal account with the plaintiff bank, to the plaintiff bank upon his private indebtedness the sum of $350.00 as interest. On August 31, 1927, G. W. Peckham paid from his personal account to the plaintiff bank, upon the indebtedness of the Wichita Royalty Company, $500.00. That is note No. 1,587. On October 19, 1927, G. W. Peckham paid to the plaintiff bank upon his personal indebtedness from his personal account the sum of $540.00. On October 19, 1927, Mr. Peckham paid upon a note charged to the Wichita Royalty Company the sum of $1,336.00.

During the time above testified to, and about which I have been asked, in which some payments have been shown to have been applied upon the notes outstanding as a charge against the Wichita Royalty Company, I will state that there are no other payments by G. W. Peckham for the account of the Wichita Royalty Company that I know of.

609 On November 5, 1927, Mr. Peckham made a payment out of his personal account on the Wich-

ita Royalty Company note No. 1,587; On February 15, 1928, he made a payment of $3,485.33 on the Wichita Royalty Company note. On February 15, 1928, Mr. Peckham paid out of his account with the plaintiff bank, upon his personal indebtedness to the bank, the sum of $513.33. On July 20, 1928, Mr. Peckham paid from his personal account, upon his private debt to the plaintiff bank, the sum of $493.78. The payment of $424.66, on September 27, 1928, was paid by G. W. Peckham out of his private account and credited upon the obligation standing in the name of Wichita Royalty Company. On September 27, 1928, he made a payment to the plaintiff bank out of the personal account and upon his personal indebtedness to the plaintiff bank in the sum of $3,163.78. On November 1, 1928, Mr. Peckham paid from his personal account, to Mr. J. M. Sweeton, upon his indebtedness to Mr. Sweeton, the sum of $4,200.00. On December 4, 1928, Mr. Peckham made a payment from his personal account with the plaintiff bank, upon his private indebtedness to the bank, of the amount of $614.50. On January 11, 1929, G. W. Peckham paid upon his personal indebtedness to the plaintiff bank, from his personal account with the bank, the sum of $2,013.33. On May 11, 1929, he paid $373.76, interest on personal indebtedness. On June 4, 1929, G. W. Peckham, from his personal account with the plaintiff bank, on his private indebtedness, paid the sum of $20,214.44. On August 24, 1929, he paid $381.09 interest on his personal indebtedness. On September 7, 1929, he paid to the plaintiff bank, from
610 his personal account, upon his private indebtedness to the bank, the sum of $5,000.00. On October 25, 1929, G. W. Peckham paid from his personal account with the same bank, to the bank upon his personal indebtedness, the sum of $3,061.00, which was just a few days before he died. That is all I find paid on those notes.

I have here a list of G. W. Peckham's checks payable to the Wichita Royalty Company, I can have those checks assembled by this afternoon.

I have available the liability account of the Wichita Royalty Company from 1923, and subsequent years. I

will take up the liability record of the Wichita Royalty Company with the plaintiff bank for the year 1925. I have here one loan left over to the Wichita Royalty Company during that year, it originated December 4, 1924, and was paid on February 18, 1925, it was a ninety day loan and paid prior to maturity. The next loan is April 11, 1925, for $8,160.00. The amount of the first loan was $10,200.00. The one of April 11, 1925, was $8,160.00, which was paid June 19, 1925, before maturity, it was a ninety day note. The next loan was June 24, 1925, ninety-day loan for $15,000.00; on August 8, 1925, they paid $10,000.00 on that loan, and on August 24, 1925, they paid the balance of the loan, the entire loan was paid before maturity. January 16, 1926, the next loan, $15,300.00; the next loan March 1, 1926, for $25,000.00, and $500.00 interest. Those two loans made in the early part of
611 1926, were not paid at maturity. The March note of $25,000.00 was indorsed by G. W. Peckham.

These checks that I testified to the other day, and this morning, bear certain tellers' numbers; I would have to look at the deposit slip to tell what teller handled each item. Mr. Bomar is one of them, he is employed at the City National Bank now. Mr. R. W. Thomason was another one, I think his number was 7, and Mr. Bomar was No. 8. Mr. Thomason is with the First National Bank of Olney at this time. Mr. Jeffus cleared a few of them, he is in cage No. 6, he is here.

On February 10, 1930, the Texas Investment Company issued its check payable to the plaintiff bank for $75,000.00, I don't recall where that check is right now.

I will begin in January, 1923, and testify what sum or sums of money were paid by G. W. Peckham as an individual, to or for the account of the Wichita Royalty Company during the succeeding period of time. I have the first check dated January 13, 1923, payable to the Wichita Royalty Company for $240.84, signed G. W. Peckham, with a notation which says, "Oil runs." This check was paid on January 16, 1923, and indorsed on the back, "For deposit only, R. R. Robertson," as trustee,

Wichita Royalty Company, "509 Security National Bank, Wichita Falls, Texas," and paid by the City National Bank on January 16. I do not know for the payment of what oil runs that check was issued, and have
612 not tried to find out.

The next check dated January 16, 1923, payable to the Wichita Royalty Company for $855.54, signed G. W. Peckham, and it says, "Oil runs on nine acres, Hattie Vaughan." That was paid on January 16, 1923, indorsed "For deposit only, R. R. Robertson as trustee, Wichita Royalty Company, 509 Security Bank Building, Wichita Falls, Texas." Cleared by the Security National Bank January 18, and it was paid on the 18th. Those two checks, above mentioned, were in the handwriting of G. W. Peckham. Aside from the notation, I do not know for what oil runs that check was issued.

The next check dated February 14, 1923, payable to the Wichita Royalty Company for $3,000.00, signed G. W. Peckham, with a notation which says, "Payment on royalties sold to Harrell," this check is indorsed "For deposit only, R. R. Robertson, as trustee, Wichita Royalty Company, 509 Security Bank Building, Wichita Falls, Texas." Cleared by the Security National Bank on February 15, and paid by the City National Bank on February 15. I could not tell you what royalty was sold to Mr. Harrell, it just says, "Harrell." I do not know what Harrell.

Next check dated February 6, 1923, payable to the Wichita Royalty Company for $566.37, signed G. W. Peckham, oil runs on four acres, Hattie Vaughan, collected 1-27-23. Indorsed, "For deposit only, R. R. Robertson as trustee for Wichita Royalty Company, 509 Security National Bank Building, Wichita Falls, Texas." Cleared by the Security National Bank on February 21,
613 1923, paid by the City National Bank on the same date. I do not know anything about for what oil runs that was.

The next is February 16, 1923, payable to the Wichita Royalty Company for $449.82, check signed by G. W. Peckham, oil runs on nine acres, Hattie Vaughan, collected

2-2-23. Indorsed, "For deposit only, R. R. Robertson for trustee, Wichita Royalty Company 509 Security National Bank Building, Wichita Falls, Texas." Cleared February 1, 1923, and paid by the City National Bank on the same day.

The next check dated March 7, 1923, payable to Wichita Royalty Company for $259.90, signed G. W. Peckham, oil runs on nine acres, Hattie Vaughan, collected 3-3-23, indorsed "For deposit only, G. W. Peckham, as trustee, Wichita Royalty Company, 509 Security National Bank Building, Wichita Falls, Texas." Paid by the City National Bank on March 15, 1923. Deposited in the City National Bank to the credit of Wichita Royalty Company.

The next one is check dated March 7, 1923, payable to the Wichita Royalty Company for $500.00, signed G. W. Peckham, and it says, "On contract with Interstate Royalty Company on Seay Royalty." The check is indorsed "For deposit only, G. W. Peckham as trustee, Wichita Royalty Company, 509 Security National Bank Building, Wichita Falls, Texas." On March 16, 1923, deposited in the City National Bank to the Wichita Royalty Company's account.

614 Check dated March 17, 1923, payable to Wichita Royalty Company for $500.00, signed G. W. Peckham, "payment on twenty acres Roland Royalty." Check indorsed "for deposit only, G. W. Peckham as trustee Wichita Royalty Company, 509 Security National Bank Building, Wichita Falls, Texas." Deposited in the City National Bank to the credit of Wichita Royalty Company.

Check dated May 15, 1923, payable to Wichita Royalty Company for $234.05, signed G. W. Peckham. Oil runs on Grimshaw, March 12 to 31, 1923. Indorsed "For deposit only, G. W. Peckham as trustee, Wichita Royalty Company, 505 Security National Bank Building, Wichita Falls, Texas." Paid on May 16, 1923. Deposited to the account of Wichita Royalty Company, in the City National Bank.

Check dated May 25, 1923, payable to the Wichita Royalty Company for $302.98, signed G. W. Peckham. Oil

runs on Grimshaw for April, by Humble. Indorsed "For deposit only, G. W. Peckham as trustee, for the Wichita Royalty Company, 509 Security National Bank Building, Wichita Falls, Texas. Deposited in the City National Bank to the credit of Wichita Royalty Company.

The next check dated August 14, 1923, payable to the Wichita Royalty Company, $5,736.16, signed G. W. Peckham, and says, "Oil runs 12-7-22, to 7-15-23, 1/32nd Ellis Holmes sold by W. H. P. to W. R. Co." Indorsed "For deposit only, G. W. Peckham as trustee for Wichita Royalty Company, 509 Security National Bank Building, Wichita Falls, Texas." Paid on August 14, 1923. I will give a list of several checks in that deposit.

615 Check dated August 14, 1923, payable to Wichita Royalty Company, for $1,309.47, signed G. W. Peckham, and says, "Oil runs 1/9th to 7-15-23, on 1/64th, Eagle Pitcher, sold by Fain to Wichita Royalty Company." That check was indorsed "For deposit only, G. W. Peckham, as trustee, Wichita Royalty Company, 509 Security National Bank Building, Wichita Falls, Texas." Paid by the City National Bank August 14, 1923.

The next check, dated August 14, 1923, payable to the Wichita Royalty Company for $1,309.47, and signed G. W. Peckham, and says, "Oil runs, to 7-15-23, on 1/64th, Eagle Pitcher, sold by W. H. P. to W. R. Co." indorsed "For deposit only, G. W. Peckham as trustee, for Wichita Royalty Company, 509 Security National Bank Building, Wichita Falls, Texas." Paid by City National Bank on August 14-23.

The next check dated August 14, 1923, payable to Wichita Royalty Company for $2,356.74, signed by G. W. Peckham. Oil runs, 1/9 to 7-15-23, on 9/320ths, Eagle Pitcher, sold by Fain to W. R. Co. Indorsed "For deposit only, G. W. Peckham as trustee, Wichita Royalty Company, 509 Security National Bank Building, Wichita Falls, Texas." Paid by the City National Bank on August 14, 1923.

Those four checks, together with a cashier's check No. 79528, dated August 14, 1923, payable to the Wichita Royalty Company for $8,800.30, and indorsed "For deposit only, G. W. Peckham as trustee, Wichita Royalty Company, 509 Security National Bank Building, Wichita Falls, Texas," and paid by the City National Bank on August 14, 1923, were deposited to the account of Wichita Royalty Company ending August 14, 1923, and deposits totaling $19,512.14. This cashier's check was purchased by G. W. Peckham, with his check of the same date, payable to the City National Bank for $8,800.30. I do not know what that check was for. I do not have any information on any of those items, other than that shown on the face of the checks themselves.

616

The next check dated August 15, 1923, payable to the Wichita Royalty Company, $199.92, signed by G. W. Peckham, and says, "Oil runs on thirty-five acres R. L. Eagle Pitcher, 7-16 to 7-31-23." Check indorsed "For deposit only, G. W. Peckham as trustee, Wichita Royalty Company, 509 Security National Bank Building, Wichita Falls, Texas," paid by the City National Bank August 15, 1923, and deposited to the account of Wichita Royalty Company in the City National Bank.

Check dated January 21, 1924, payable to the Wichita Royalty Company for $5,000.00, signed G. W. Peckham, indorsed "For deposit only, G. W. Peckham as trustee, Wichita Royalty Company, 509 Security National Bank Building, Wichita Falls, Texas." Paid on February 2, 1924, deposited to the account of Wichita Royalty Company in the City National Bank on the same day. I do not know anything about the purpose of that check.

I have a check dated February 6, 1924, payable to Wichita Royalty Company for $14.15, signed G. W. Peckham, and says, "Gas on Ellis Holmes', for September, 1923." Indorsed "For deposit only, G. W. Peckham, as trustee, Wichita Royalty Company, 509 Security National Bank Building, Wichita Falls Texas." Deposited to the account of Wichita Royalty

617

Company on February 8, 1924. The same date that it was canceled paid.

I have a check dated April 15, 1924, payable to Wichita Royalty Company, for $184.54, signed G. W. Peckham, and says, "Oil runs last half of March, Texhoma-Staniforth lease, Archer County." Indorsed, "For deposit only, G. W. Peckham, as trustee, Wichita Royalty Company, 509 Security National Bank Building, Wichita Falls, Texas." Paid by City National Bank April 16, 1924, deposited to the account of Wichita Royalty Company on the same date.

The next I have a check dated April 9, 1924, payable to Wichita Royalty Company, for $141.38, signed G. W. Peckham, and says, "Oil runs, Texhoma-on Staniforth lease, first half of March," indorsed "For deposit only, G. W. Peckham, Trustee," the same as the others. Paid by City National Bank on April 16, 1924, deposited to the account of Wichita Royalty Company on the same date.

Check dated April 9, 1924, payable to Wichita Royalty Company for $525.07, signed by G. W. Peckham, and says, "For oil runs, Panhandle on R. M. F. first half of March." Indorsed, "For deposit only, G. W. Peckham, as trustee, Wichita Royalty Company, 509 Security National Bank Building, Wichita Falls, Texas." Paid on April
618 16, 1924, deposited to the account of Wichita Royalty Company, on the same day.

Next have a check dated April 24, 1924, payable to the Wichita Royalty Company for $375.55, signed G. W. Peckham, and says, "Panhandle lease, R. M. F. last half of March." Indorsed, "For deposit only, G. W. Peckham as trustee, for Wichita Royalty Company, 509 Security National Bank Building, Wichita Falls, Texas." Paid April 29, 1924. Deposited to the account of Wichita Royalty Company on the same day.

Check dated May 2, 1924, payable to Wichita Royalty Company, for $480.04, signed G. W. Peckham, Panhandle runs, first half of April, R. M. F. Indorsed, "For deposit only, G. W. Peckham, as trustee for Wichita Royalty Company, 509 Security National Bank Building, Wichita

Falls, Texas." That was deposited to the Wichita Royalty Company's account on the day that it was cancelled paid. May 7, 1924.

The next check dated April 29, 1924, payable to Wichita Royalty Company for $206.58, signed G. W. Peckham, Texhoma runs, first half of April, Wilson Royalty. Indorsed "For deposit only, G. W. Peckham, Trustee Wichita Royalty Company, 509 Security National Bank Building, Wichita Falls, Texas." Paid on May 7, 1924, deposited to the Wichita Royalty Company's account on the same date.

Check dated May 13, 1924, payable to Wichita Royalty Company, for $182.44, signed by G. W. Peckham, Texhoma runs, last half April, Wilson Royalty. Indorsed, "For deposit only, G. W. Peckham, Trustee, Wichita Royalty Company, 509 Security National Bank Building, Wichita Falls, Texas." Paid by City National Bank on May 15, 1924, and deposited to Wichita Royalty Company's account on the same date.

619

Check dated May 26, 1924, payable to Wichita Royalty Company, for $538.30. Signed G. W. Peckham, Panhandle Runs, on R. M. F. last half of April. Indorsed, "For deposit only, G. W. Peckham, as trustee Wichita Royalty Company, 509 Security National Bank Building, Wichita Falls, Texas." Paid on May 27, 1924, and deposited to the account of Wichita Royalty Company on the same day.

Check dated May 28, 1924, payable to the Wichita Royalty Company for $138.75, signed by G. W. Peckham, Texhoma runs, Staniforth lease, first half of May, Indorsed "For deposit only, G. W. Peckham, trustee, Wichita Royalty Company, 509 Security National Bank Building, Wichita Falls, Texas." Paid June 3, 1924, deposited to the account of Wichita Royalty Company on the same date.

Check dated June 12, 1924, payable to Wichita Royalty Company for $74.63, signed by G. W. Peckham, Texhoma Runs last half of May, Wilson Royalty. Indorsed "For deposit only, G. W. Peckham, trustee, Wichita

Royalty Company, 509 Security National Bank Building, Wichita Falls, Texas." Paid June 14, 1924. Deposited to the account of Wichita Royalty Company on the
620 same date.

Check dated July 5, 1924, payable to Wichita Royalty Company for $135.32, signed by G. W. Peckham, and says, "Griswold runs, March and April, R. M. F. lease. Indorsed "For deposit only, G. W. Peckham, Trustee, Wichita Royalty Company, 509 Security National Bank Building, Wichita Falls, Texas." Paid July 9, 1924. Deposited to the account of Wichita Royalty Company on the same date.

Check dated June 28, 1924, payable to Wichita Royalty Company, $55.64, signed by G. W. Peckham. First half of June runs, Texhoma on Staniforth lease indorsed "For deposit only, G. W. Peckham as trustee, Wichita Royalty Company, 509 Security National Bank Building, Wichita Falls, Texas." Paid July 18, 1924. Deposited to Wichita Royalty Company's account on that date.

Next have a check dated July 31, 1924, $35.78, payable to Wichita Royalty Company, signed G. W. Peckham, and says, "Texhoma, first half of July, Wilson Royalties." Indorsed, "For deposit only, G. W. Peckham, trustee, Wichita Royalty Company, 509 Security National Bank Building, Wichita Falls, Texas. Paid August 7, 1924. Deposited to the account of Wichita Royalty Company on the same date.

Check dated July 23, 1924, payable to Wichita Royalty Company, $40.04, signed G. W. Peckham, and says, "Texhoma runs last half of June, Wilson Royalties. Indorsed,
"For deposit only, G. W. Peckham, trustee,
621 Wichita Royalty Company, 509 Security National Bank Building, Wichita Falls, Texas." Paid August 7, 1924. Deposited to the account of Wichita Royalty Company on the same date.

The next I have a check dated September 3, 1924, payable to Wichita Royalty Company for $34.75, signed G. W. Peckham. Texhoma runs, Staniforth lease, last half of July. Indorsed, "For deposit only, G. W. Peckham

as trustee, Wichita Royalty Company, 509 Security National Bank Building, Wichita Falls, Texas." Paid September 9, 1924. Deposited to the account of Wichita Royalty Company on the same day.

Next, I have a check dated September 5, 1924, payable to Wichita Royalty Company for $751.41, signed by G. W. Peckham, and says, "Panhandle runs May and first three days of June, Wilson Royalties." Indorsed, "For deposit only, G. W. Peckham, trustee for Wichita Royalty Company, 509 Security National Bank Building, Wichita Falls, Texas." Paid on September 9, 1924. Deposited to the account of Wichita Royalty Company on the same day.

Check dated September 3, 1924, payable to Wichita Royalty Company for $52.83, signed by G. W. Peckham, Texhoma runs, Staniforth lease, first half of August. Indorsed, "For deposit only, G. W. Peckham, Trustee, Wichita Royalty Company, 509 Security National Bank Building, Wichita Falls, Texas." Paid September 9, 1924, deposited in the account of Wichita Royalty Company on the same date.

622 Check dated October 16, 1924, payable to the Wichita Royalty Company, $54.37, signed G. W. Peckham. Texhoma runs, Wilson Royalty, last half of August, and indorsed, "For deposit only, G. W. Peckham, trustee, Wichita Royalty Company, 509 Security National Bank Building, Wichita Falls, Texas." Paid October 20, 1924, deposited to the account of Wichita Royalty Company on the same date.

Check dated October 16, 1924, payable to the Wichita Royalty Company for $45.00, signed G. W. Peckham, Texhoma runs, Wilson Royalty, September 15,-30, indorsed "For deposit only G. W. Peckham as trustee, Wichita Royalty Company, 509 Security National Bank Building, Wichita Falls, Texas. Paid October 20, 1924, and deposited to the account of Wichita Royalty Company on the same day.

Check dated October 16, 1924, payable to Wichita Royalty Company for $47.36, signed by G. W. Peckham. Tex-

homa runs, Wilson Royalty, September 1 to 15th. Indorsed, "For deposit only, G. W. Peckham as trustee, Wichita Royalty Company, 509 Security National Bank Building, Wichita Falls, Texas." Paid October 20, 1924. Deposited to the account of Wichita Royalty Company on the same date.

Check dated October 28, 1924, payable to Wichita Royalty Company for $39.05, signed by G. W. Peckham, and says "Texhoma runs, October 1st to 15th, Wilson Royalty." Indorsed, "For deposit only, G. W. Peck-
623 ham, trustee, Wichita Royalty Company, 509 Security National Bank Building, Wichita Falls, Texas." Paid November 8, 1924. Deposited to the account of Wichita Royalty Company on the same date.

Check dated November 12, 1924, payable to Wichita Royalty Company, $47.08, signed by G. W. Peckham. It says, "Texhoma runs, Wilson Royalty, October 16,-31." Indorsed, "For deposit only, G. W. Peckham as trustee, Wichita Royalty Company, 509 Security National Bank Building, Wichita Falls, Texas." And it was paid November 16, 1924, and deposited to the Wichita Royalty Company account on the same day.

Check dated November 28, 1924, payable to Wichita Royalty Company $36.03, signed G. W. Peckham. Texhoma runs, November 1 to 15, Wilson Royalty. Indorsed "For deposit only, G. W. Peckham as trustee, Wichita Royalty Company, 509 Security National Bank Building, Wichita Falls, Texas." Paid November 29, 1924, and deposited to the account of Wichita Royalty Company on the same date.

I next have a check dated December 9, 1924, payable to Wichita Royalty Company, $197.82, signed G. W. Peckham. Texhoma store, Wilson Royalty. Indorsed "For deposit only, G. W. Peckham, as trustee, Wichita Royalty Company, 509 Security National Bank Building, Wichita Falls, Texas. Paid December 10, 1924, and deposited to the account of Wichita Royalty Company on the same date.

Next, December 13, 1924, payable to Wilson
624 Royalty Company, $33.23, signed by G. W. Peckham. Texhoma last half of November, Wilson Royalty. Indorsed, "For deposit only, G. W. Peckham as trustee, Wichita Royalty Company, 509 Security National Bank Building, Wichita Falls, Texas." Paid December 16, 1924, and deposited to the account of Wichita Royalty Company on the same day.

Check dated December 30, 1924, payable to Wichita Royalty Company, $34.66, signed G. W. Peckham. Texhoma runs, Wilson Royalty, December 1 to 15. Indorsed, "For deposit only, G. W. Peckham as trustee, Wichita Royalty Company, 509 Security National Bank Building, Wichita Falls, Texas." Paid January 10, 1925, and deposited to the account of Wichita Royalty Company on the same date.

Check dated January 13, 1925, payable to Wichita Royalty Company, $52.27, signed by G. W. Peckham, and says, "Refund from McCory on Wilson Royalty." Indorsed, "For deposit only, G. W. Peckham as trustee, Wichita Royalty Company, 509 Security National Bank Building, Wichita Falls, Texas." Paid January 16, 1925, and deposited to the account of Wichita Royalty Company on the same date.

Check dated January 13, 1925, payable to Wichita Royalty Company, $31.04, signed G. W. Peckham. Texhoma runs, December 16 to 31, Wilson Royalty, and indorsed, "For deposit only, G. W. Peckham trustee, Wichita Royalty Company, 509 Security National Bank Building, Wichita Falls, Texas." Paid January 16.

625 The next is a check dated February 4, 1925, payable to Wichita Royalty Company for $31.25, signed G. W. Peckham. "Refund on commission, Lane Royalty." And indorsed "For deposit only, G. W. Peckham, trustee, Wichita Royalty Company, 509 Security National Bank Building, Wichita Falls, Texas." Paid February 11, 1925, and deposited to the account of Wichita Royalty Company on the same day.

Check dated November 6, 1925, payable to Wichita Royalty Company, for $1,500.00, signed G. W. Peckham, and indorsed "For deposit only, G. W. Peckham as trustee, Wichita Royalty Company, 509 Security National Bank Building, Wichita Falls, Texas." Paid November 10, 1925, and deposited to the account of Wichita Royalty Company on the same day. There is no other notation on the check. I have no information as to the purpose of its being given, except from my investigation, which discloses that it is a refund on a check dated October 8, 1925, for $5,500.00, where it stated that it was to purchase royalties, and it described some of them, listed as properties Nos. 81 and 82, Callahan County Royalty, $2,500.00; 320 acres Archer and Young County, $1,500.00, and the further item, $1,500.00. This check is a refund of that $1,500.00 so advanced on October 8, 1925. The check of $1,500.00 on October 8, is refund to that extent of that company.

Next is a check dated February 18, 1926, payable to Wichita Royalty Company, $1,103.13, signed G. W. Peckham, and says, "Last half Jennie Stephens Roy-
626 alty." Indorsed, "For deposit only, G. W. Peckham, trustee, Wichita Royalty Company, 509 Security National Bank Building, Wichita Falls, Texas." Paid February 24, 1926, and deposited to the account of Wichita Royalty Company on the same day.

The next check dated January 30, 1926, payable to the order of Wichita Royalty Company, $1,235.99, signed G. W. Peckham and says, "Runs first half January, Stephens Royalty." Paid February 10, 1926, and deposited to the account of Wichita Royalty Company on the same day.

A check dated July 28, 1926, payable to the Wichita Royalty Company, $111.67, signed G. W. Peckham, and says, "Rental on Porter Ranch," and indorsed "For deposit only, G. W. Peckham, as trustee, Wichita Royalty Company, 509 Security National Bank Building, Wichita Falls, Texas." Paid July 27, 1926. It was deposited to the account of Wichita Royalty Company on the same day.

The next check dated June 29, 1923, payable to the order of City National Bank, for $1,026.67, signed G. W. Peckham, draft by Wichita Royalty Company on Harrell, payment on Ellis Holmes. That check was in purchase of Cashier's check No. 17021, dated June 29, 1923, payable to Wichita Royalty Company. It is indorsed "For deposit only, G. W. Peckham, as trustee, Wichita Royalty Company, 509 City National Bank Building, Wichita Falls, Texas," and paid by the City National Bank June 29, 1923, deposited to the account of Wichita Royalty
627 Company on the same day.

Next, check dated July 25, 1923, payable to the City National Bank, $3,080.00, signed G. W. Peckham, in payment of cashier's check No. 17884, dated July 25, 1923, for $3,080.00, payable to G. W. Peckham. Indorsed, "G. W. Peckham." Paid on November 7, 1923 and deposited to the account of Wichita Royalty Company. The last check does not go—this is not supposed to be in there. The check that I have just described as having purchased a cashier's check, did not go into the Wichita Royalty Company account.

I have not described this check of July 25, 1923, payable to the City National Bank, $1,033.33, signed G. W. Peckham, and paid on July 25, 1923, it was in payment of a cashier's check, No. 78885, dated July 25, 1923. Payable to G. W. Peckham for that amount, indorsed "G. W. Peckham by E. E. Scannell, for deposit only, G. W. Peckham as trustee, Wichita Royalty Company, 509 Security National Bank Building, Wichita Falls, Texas." Paid on July 26, 1923, and deposited to the account of Wichita Royalty Company on the same day. Other moneys deposited on that day to the account of Wichita Royalty Company, as reflected by the deposit slip, was $3,080.00. I do not know the purpose of that.

Next is a check of August 2, 1923, payable to B. L. Fain for $3,100.00, signed G. W. Peckham. On August 2, 1923, indorsed, "B. L. Fain," and deposited to the account of Wichita Royalty Company on August 3, 1923. I have a deposit on March 18, 1924, totaling $1,617.97, of which it

shows $598.89 was deposited by G. W. Peckham;
628 the other deposits making up that balance of W. H. Peckham, was $181.19, oil runs, $837.89.

That $3,100.00 check which is dated August 2, 1924, was deposited to the account of the Wichita Royalty Company —I am wrong about that. This was deposited to the account of B. L. Fain, and he gave his check for it—that particular check was not deposited to the account of Wichita Royalty Company—that is the $3,100.00 check. Most of these checks had the deposit numbers on them. I am reasonably certain as to the deposit of the items I have testified with reference to, and have given it as my opinion.

Mr. Humphrey:

At this time the City National Bank and J. T. Harrell offer in evidence the respective checks heretofore testified to, together with a memoranda attached thereto, the same being deposit slips and other data attached to the check. (Check being marked "Plaintiff's Exhibit 43" and reading as follows:)

629 PLAINTIFF'S EXHIBIT 43.

This exhibit contains a number of checks payable to Wichita Royalty Company, and signed by G. W. Peckham—except where otherwise stated—covering various amounts. Also three cashier's checks with checks of G. W. Peckham made payable to City National Bank for purchase of Cashier's checks. Also deposit slips showing where these cashier's checks were deposited to account of Wichita Royalty Company. Also ledger sheet showing deposit of $598.89 to account of Wichita Royalty Company —with deposit slip corresponding.

Date	Amount	Perforated	Check to Cover
1-16-23	$855.54	1-16-23	Oil runs on 9 ac Hattie Vaughn.
1-13-23	240.84	1-16-23	Oil runs.

Date	Amount	Perforated	Check to Cover
1-13-25	31.04	1-16-25	Thirty one & 4/100 Texhoma runs Dec. 16-31 Wilson Royalty.
1-13-25	52.27	1-16-25	Fifty two & 27/100 refund from McCrary on Wilson royalty.
12- 9-24	197.83	12-10-24	Texhoma storage Wilson roy.
11-28-24	36.03	12-29-24	Texhoma runs Nov. 1-15 Wilson roy.
2-16-23	449.82	2-21-23	Oil runs on 9 ac Hattie Vaughn collected 2-12-23.
3- 7-23	259.92	3-16-23	Oil runs on 9 ac Hattie Vaughan collected 3-3-23.
3- 7-23	500.00	3-16-23	On contract with Interstate Royalty Co. on ..... Royalty.
3-17-23	500.00	3-19-23	Payment on 20 ac in R ..... Royalty.
2- 4-25	31.25	2-11-25	Refund on commission Lane royalty.

(Here appears receipt as follows: On 7-29-27 WRCO received $115.81 from Knight & Hines as rent.)

2-14-23	3,000.00	2-15-23	Payment on royalty sold to Harrell.
2- 6-23	566.37	2-21-23	Oil runs on 4 ac Hattie Vaughan collected 1-27-23.
8-15-23	199.92	8-15-23	Oil runs on 35 ac R. T. Eagle Pitcher 7-16 to 7-31-23.
1-21-24	5,000.00	2- 2-24	.....
2- 6-24	14.15	2- 8-24	Gas on Ellis Holman for Sept. '23.

Date	Amount	Perforated	Check to Cover
4-15-24	184.54	4-16-24	Oil runs last ½ March Texhoma on Stainforth lease Archer Co.
5-25-23	302.98	5-26-23	Oil runs on Grimshaw for April run by Humble.
5-15-23	234.05	5-16-23	Oil runs on Grimshaw March 12 to 31-23.
8-14-23	1,309.47	8-14-23	Oil runs 1-9 to 7-15-23 on 1/64 Eagle Pitcher sold by Fain to WRCo.
8-14-23	5,736.16	8-14-23	Oil runs 12-7-22 to 7-15-23 on 1/32 Ellis Holmes sold by WHP to WRCo.
7-23-24	40.04	8- 7-24	Texhoma runs last half June Wilson Royalty.
7-31-24	35.78	8- 7-24	Texhoma 1st half July Wilson Royalty.
4- 9-24	141.38	4-16-24	Oil runs — Texhoma on Staniforth lease 1st half of March.
4- 9-24	525.07	4-16-24	Oil runs — Panhandle on RMF 1st half March.
9- 5-24	751-41	9- 9-24	Panhandle runs May & first 3 days June Wilson Royalty.
9- 3-24	34.75	9- 9-24	Texhoma runs Staniforth lease last half July.
6-28-24	55.64	7-18-24	1st half June runs Texhoma on Staniforth lease.
7- 5-25	135.42	7- 9-24	Griswold runs March & April RMF lease.
12-30-24	24.66	1-10-25	Texhoma runs Wilson Roy Dec. 1-15.
12-13-24	33.23	12-16-24	Texhoma last ½ Nov. Wilson Roy.
11-12-24	47.08	11-13-24	Texhoma runs Wilson Royalty Oct. 16-31.

Date	Amount	Perforated	Check to Cover
10-28-24	39.05	11- 8-24	Texhoma runs Oct. 1-15 Wilson Roy.
6-12-24	74.63	6-14-24	Texhoma runs last half May Wilson Royalty.
11- 6-25	1,500.00	11-10-25	.....
5- 2-24	480.04	5- 7-24	Panhandle runs 1st half Apr. RMF lease.
4-24-24	375.55	4-29-24	Panhandle runs RMF lease last half of March.
4-29-24	206.58	5- 7-24	Texhoma runs first ½ April Wilson royalty.
5-12-24	182.44	5-15-24	Texhoma runs last ½ April Wilson royalty.
5-28-24	138.75	6- 3-24	Texhoma runs Staniforth lease 1st half May.
5-26-24	538.30	5-27-24	Panhandle runs on RMF lease last half April.
10-16-24	54.37	10-20-24	Texhoma runs Wilson Royalty last ½ August.
9- 3-24	52.83	9- 9-24	Texhoma runs Staniforth runs first half Aug.
10-16-24	47.36	10-20-24	Texhoma runs Wilsoy Royalty Sept. 1 to 15.
10-16-24	45.00	10-20-24	Texhoma runs Wilson Royalty Sept. 15 to 30.
3-17-23	500.00	3-19-23	20 acres in R..... royalty.
3- 7-23	500.00	3-16-23	On contract with Interstate Royalty Co. on sale royalty.
1-30-26	1,235.99	2-10-26	Runs first half Jan. Stephenson royalty.
7-26-26	111.67	7-27-26	Rental on Porter Ranch.
2-18-26	1,103.13	2-24-26	Last half Jan. Stephens Royalty.

(Cashier's Check):

City National Bank of Commerce, Wichita Falls, Texas, Jun. 29, 1923. No. 78021. Pay to the order of Wichita Royalty Co. $1,026.67.

(Signed) W. L. ROBERTSON,
Vice-President.

Paid 6-29.23.

(Mr. Peckham's check):

Wichita Falls, Texas, 6-29-1923. City National Bank of Commerce. Pay to City Nat'l Bank or Bearer $1,026.67. (Draft for Wichita Royalty on Harrell payment on Ellis Holmes). Paid 6-29-23.

(Signed) G. W. PECKHAM.

Deposit slip:

City National Bank.
Deposited by Wichita Royalty.
Wichita Falls, Texas, 6-29-23.

Checks as follows:

Peckham, W. H.	2,566.66	
F. O. Harrell	1,026.67	
Oil runs	212.25	
"	1,450.25	"8"
Total	$5,345.39	

Date	Amount	Perforated	Check to Cover
8-14-23	1,309.47	8-14-23	Oil runs 1-9 to 7-15-23 on 1/64 Eagle Pitcher sold to WHP to WRCo.
8-14-23	2,356.74	8-14-23	Oil runs 1-4 to 7-15-23 on 9/320 Eagle Pitcher sold by Fain to WRCo.

(Cashier's Check):

(Perforated) Paid 8-14-23. City National Bank. No. 79528. Wichita Falls, Texas, Aug. 14, 1923. Pay to the order of Wichita Royalty Company $8,800.30.

(Signed) W. L. ROBERTSON,
Vice-President.

(Peckham's check):

Wichita Falls, Texas, 8-14-23. (Perforated) Paid 8-14-23. City National Bank of Commerce. Pay to City National Bank or Bearer $8,800.30.

(Signed) G. W. PECKHAM.

(Deposit slip):

City National Bank.
Deposited by Wichita Royalty Co.
Wichita Falls, Texas, Aug. 14, 1923.

Checks as follows:

	5,736.16	
	1,309.47	
	1,309.47	
	2,356.74	
C. C.	8,800.30	
	19,512.14	"8"

634 (Cashier's check):

City National Bank.

No. 78885.

Wichita Falls, Texas, Jul. 25, 1923.

Pay to the order of G. W. Peckham $1033.33.

(Signed) .....?

Paid 7-26-23.

(Peckham's check):

Paid 7-25-23.

Wichita Falls, Texas, 7-25-23.
City National Bank of Commerce.
Pay to City Nat'l Bank or bearer $1,033.33.
(Signed) G. W. PECKHAM.

(Deposit slip):

City National Bank.
Deposited by Wichita Royalty.
Wichita Falls, Texas, 7-24-23.
Checks as follows:

Fain	3,080.00	
Peckham	1,033.33	"8"
	4,113.33	

(Work sheet):

Items from G. W. Peckham deposited to account of Wichita Royalty Company.

Date	Amount
3-18-24	598.89

(Deposit slip):

City National Bank.
Wichita Royalty Company.
Wichita Falls, Texas, March 18, 1924.
Checks as follows:

G. W. P.	598.89	
W. H. P.	181.19	
Oil runs	837.89	
	1,617.97	"8"

635 Mr. Rogers:

To each and every one of such checks, and all of them collectively, and particularly with respect to such checks as show upon their face to be a refund of oil runs made by Peckham to his trust, the Wichita Royalty Company, and its trustee, we object for the reason that the repayment by G. W. Peckham of the proceeds of oil runs to his personal account, and thereafter repaid by him to the trust, could not, to any extent, enter into or change the balance in an accounting between the parties. It affirmatively appearing from the face of most of the checks that the payments were made, as to a refund of proceeds of oil theretofore received by G. W. Peckham, and with respect to other checks, no information is given to show that the items would be properly charged against the Wichita Royalty Company account in an accounting between the parties.

(Which objection was by the Court overruled, to which the defendant then and there excepted.)

The Witness:

There are some checks in Exhibit 43, one of them being for $3,000.00 on February 14, 1923, and the other June 29, 1923, for $1,026.67, which refer to Harrell, that was not J. T. Harrell, the defendant in this case.

Check dated May 5, 1925, payable to Ray and Massie, $2,500.00, signed G. W. Peckham, one-half interest deal with Allen Moran, Routan land, and indorsed "Deposited to the credit of Ray and Massie, and cleared by the Security National Bank May 6, 1925," paid by the City

636 National Bank on the same day--it went to their benefit, that was deposited to the account of Ray and Massie.

Check dated June 25, 1925, drawn on the Security National Bank, payable to Murchison and Fain Oil Company for $9,493.75, signed by G. W. Peckham for 1/16th of the interest in 217 acres in blocks 19, 21 and 22, South Anderson Ranch; indorsed "Deposit only, Murchison and

Fain Oil Company by B. C. Ackerman." Cleared by the City National Bank on June 26, 1925, and paid by the Security National Bank. That was not deposited to the account of Wichita Royalty Company.

I have here a check dated June 29, 1925, payable to the City National Bank of Olney, $1,997.00 drawn on the City National Bank of Wichita Falls, signed G. W. Peckham and indorsed by the City National Bank of Olney, June 30, 1925, cleared through the First National Bank, Wichita Falls, Texas, on July 2, 1925, paid by the City National Bank July 2, 1925; that was on one-eighth royalty west one-half of southwest quarter of northwest quarter of Section 2, J. Pointevant survey, Young County, Texas. It was acquired from G. W. Vernon and wife, June 22, 1925, recorded in Volume 111, page 253, deed records of Young County, Texas; it is for an undivided one-fourth interest in twenty acres. The deed was to G. W. Peckham. I would have to get the payments Mr. Peckham made from the escrow agreement at Olney.

With reference to the check for $9,492.75, I have information that that property is No. 80 of the Wichita
637 Royalty Company, and conveyed by a deed from G. W. Peckham to Wichita Royalty Company, dated the 20th day of July, 1925, covering the north forty acres of block 21, Anderson subdivision of his south pasture as per plat of record in the records of Archer County, Texas; that is conveying 1/16th interest of all oil and gas and other minerals; and also have a deed dated the first of July, 1925, signed by G. W. Peckham conveying the south 32 acres of block 21, of the South Anderson ranch, as shown by map or plat of record in the office of the county clerk of said county; the south sixty acres of the west eighty acres of block No. 22, Anderson South Pasture subdivision; north twenty-five acres of the east fifty acres of the west one hundred acres, block 69, South Anderson pasture; the east sixty acres of the west 160 acres of block No. 19, Anderson South Pasture subidivision. A total of 217 acres and that is the same property as described in Wichita Royalty Company voucher No.

385. Mr. Peckham gave his check to Murchison and Fain on June 25, for his interest in that property, 1925, and the Royalty Company check was issued on June 24, 1925, and paid June 25, 1925, and their voucher, according to their records covering the same property as described in the notation on the corner of Mr. Peckham's check to Murchison and Fain Oil Company. The Wichita Royalty Company check is for $6,000.00, and the Murchison and Fain check is for $9,493.75. I will ascertain later from the deed when Mr. Peckham got title to this property and what is paid for it, and when he got the deed.

638 As to the information I have about the $2,500.00 Ray and Massie Check; that property is No. 79 of the Wichita Royal Company and it is a conveyance dated June 30, 1925, by J. H. Massie, and George T. Ray, to the Wichita Royalty Company and it covers an undivided 1/16th interest in and to all oil and gas and other minerals in and under and that may be produced from the following described land situated in Archer County, Texas, to-wit, 117 acres of land out of the Isaac Holman League and Labor of land, patented to the heirs of Isaac Holman by virtue of certificate No. 672, being known and described as block No. 9 of the Crawford pasture subdivision of said Holman survey. It is acknowledged June 30, 1925, filed for record in Archer County, Texas, November 5, 1925, and volume 108, page 173; so it is my opinion that that $2,500.00 check was in payment of that mineral interest.

On October 17, 1925, check payable to the First National Bank $2,252.25, signed by G. W. Peckham. Cleared by the First National Bank on October 19, 1925. Paid by the City National Bank on the same day. That is for a draft drawn by A. J. Mathis, from Cross Plains, Texas, with the royalty deed attached. The deed is dated October 14, 1925. Signed A. J. Mathis, and L. Mathis. Has $2.50 of revenue stamps on it, covers undivided 1/4th interest in and to all of the oil and gas and other minerals in and under and that may be produced from the fol-

639 lowing described lands; situated in Callahan, Texas, being the east thirty acres off of a sev-

enty-one acre tract of land out of the A. D. Millican Survey in Callahan County, Texas. This deed was to the Wichita Royalty Company, a trust estate, of Wichita County, Texas, known as No. 81. A draft came in on George Peckham with a mineral conveyance attached, to the First National Bank of this city; the draft was in the amount of $2,250.00, First National Bank charged $2.25 exchange. The deed was to the Wichita Royalty Company. The name, "Wichita Royalty Company" in that mineral conveyance is written in a different typewriter from the balance of the typewriting on the instrument. I do not think this shows that the name of the original grantee had been erased and that the Wichita Royalty Company was inserted—it looks to me like it had been left blank. I cannot see any erasure on it myself. The draft came into the First National Bank, drawn on G. W. Peckham. That was filed for record on October 23, 1925, at 9:00 o'clock A. M.

Mr. Rogers:

We offer the deed in evidence and ask that it be photostated.

(Marked "Defendant's Exhibit No. 18," and reading as follows:)

Dex 18

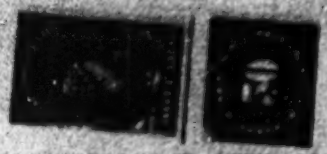
THE STATE OF TEXAS,
County of Callahan

Know All Men by These Presents:

That we, A. J. Mathis and wife, L. Mathis

of Callahan County, Texas, for and in consideration of the sum of twenty-two hundred and fifty Dollars ($ 2250.00) cash in hand paid by Wichita Royalty Company, a trust estate of Wichita County, Texas, hereinafter called Grantee, the receipt of which is hereby acknowledged, have granted, sold, conveyed, assigned and delivered, and by these presents do grant, sell, convey, assign and deliver unto the said Grantee and undivided an undivided 1/4 interest in and to all of the oil, gas and other minerals in and under, and that may be produced from the following described land situated in Callahan County, Texas, to-wit:

Being the N. 30 acres off of a 71 acre tract of land out of the S. Milligan Survey in Callahan County, Texas, conveyed to A. J. Mathis, by R. E. Clements and wife, R. J. Clements, on the 4th day of Dec. 1907, by Deed of that date, recorded in Vol. 45, page 116, Deed Records of Callahan County, Texas, and being more particular described as follows to-wit: Beginning at the S. E. corner of said 71 acre tract; thence W. to the N. E. corner of the Mathis 2nd. Addition to the town of Cross Plains, Texas; thence S. with E. line of said Mathis 2nd. Addition to the Cross Plains and Rising Star public road; thence E. with the N. line of said Cross Plains and Rising Star public road to the S. E. corner of 71 acre tract of land; thence N. to the place of beginning and containing 30 acres of land and being the East 30 acres off of said tract of 71 acres and being E. of the Mathis 2nd. Addition to the town of Cross Plains, Texas.



Together with the right of ingress and egress at all times for the purpose of mining, drilling and exploring said lands for oil, gas and other minerals, and removing the same therefrom.

Said land being now under an oil and gas lease executed in favor of R. L. Albritton and others it is understood and agreed that this sale is made subject to the terms of said lease, but covers and includes one-fourth of all of the oil royalty, and gas rental or royalty due and to be paid under the terms of said lease.

It is understood and agreed that one-fourth of the money rentals which may be paid to extend the term within which a well may be begun under the terms of said lease is to be paid to the said Grantee and in event that the above described lease for any reason becomes cancelled or forfeited, then and in that event an undivided one-fourth of the lease interests and all future rentals on said land for oil, gas and other mineral privileges shall be owned by the said Grantee owning 3/4 and 1/4 of all oil, gas and other minerals in and under said lands, together with 3/4 and 1/4 interest in all future rents.

To have and to hold the above described property, together with all and singular the rights and appurtenances thereto in any wise belonging unto the said Grantee herein, his heirs and assigns forever; and we do hereby bind our heirs, executors and administrators to warrant and forever defend all and singular the said property unto the said Grantee herein, his heirs and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof.

Witness our hands this the 14th day of October 19 41.

Witnesses:

A. J. Mathis
L. Mathis

568

STATE OF TEXAS,

County of Callahan

Before me, Virgil Hart

Notary Public in and for Callahan County, Texas, on this day personally appeared

A. J. Mathes and L. Mathes his wife

known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they executed the same for the purposes and consideration therein expressed, and the said L. Mathes wife of the said A. J. Mathes having been examined by me privily and apart from her husband, and having the said instrument by me fully explained to her, she acknowledged the same to be her act and deed and declared that she had willingly signed the same for the purposes and consideration therein expressed, and that she did not wish to retract it.

GIVEN UNDER MY HAND AND SEAL OF OFFICE This 14th day of Oct A.D. 1925.

(Seal) Virgil Hart

Notary Public within and for Callahan County, Texas

STATE OF TEXAS }
COUNTY OF CALLAHAN }

I, S. E. SETTLE, Clerk of the County Court of said County, do hereby certify that the foregoing instrument of writing, dated the 14 day of Oct A.D. 1925, with its certificate of Authentication, was filed for record in my office the 20 day of Oct A.D. 1925, at 9 o'clock A. M., and duly recorded this 24 day of Oct A.D. 1925, at 9 o'clock A. M., in the Deed Records of said County, in Volume 162 Page 569

Witness my hand and the seal of the County Court of said County, at office of Baird this the 24 day of Oct A.D. 1925.

(Seal) S. E. Settle
Clerk County Court, Callahan County, Texas

By [illegible] Deputy

RELEASED
ROYALTY DEED
INDEXED
COMPARED

TO 10-14-25

FILED FOR RECORD This 23rd day of Oct A.D. 1925 at 9 o'clock A. M.

S. E. Settle County Clerk, Callahan County, Texas

By [illegible] Deputy

RECORDED In Book M Page 569 Recording Fee $1.50

THIS INSTRUMENT SHOULD BE FILED WITH THE COUNTY CLERK IMMEDIATELY FOR RECORD.

The Denny Chenault Business Colleges, Dallas, Tex.—Form 10-10 Publishers Legal Blanks

Wichita Falls Tex.

569

CORPORATION ACKNOWLEDGMENT.

The State of Texas, County of

BEFORE ME

a Notary Public in and for the County of, in the State of Texas, on this day personally appeared

of the Corporation of known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, and in the capacity therein set forth.

GIVEN UNDER MY HAND AND SEAL OF OFFICE This day of A.D. 19

(Seal)

642 The Witness:

At the place where the $2,250.00 is written, I think there has been something erased there. The $2,250.00 written out in figures is the same typewriter, and the same writing that a description of the deed is made of. $2,250.00 in numbers here, I don't know about that—it looks like the same typewriter—it is not the same typewriter that was used to write the name, "Wichita Royalty Company" in there. There is no erasure under the $2,250.00 spelled out "twenty." The line containing the words "Wichita Royalty Company" and "a trust estate of Wichita County, Texas," shows to be written upon a typewriter different from the typewriter that was used in the writing of the rest of the instrument. There is $2.50 revenue stamps on that transaction. He paid that to the City National Bank, he paid that from the bank October 20, 1925. Also C. A. Rogers, $225.00 for commission on the deal, paid E. C. DeMontel $25.00 attorney fee examination of the abstract. I don't know whether it was addressed to the Wichita Royalty Company or to G. W. Peckham. November 12, 1925, he paid B. L. Fain $1,500.00 on a sale of Kunkle Royalty. On property No. 82, instrument dated October 9, 1925, signed B. L. Fain and acknowledged on the same date, and recorded in Young County, Texas, November 12, 1925, volume 116, page 130, revenue stamps $1.50. Conveyed title to Wichita Royalty Company, and it was an undivided 1/64th interest in and to all of the oil and gas and other mineral in and under or that may be produced from the following described land situated in Young and

643 Archer County, to-wit, "All of the E. Pankonin, No. 1,700, and all of the L. Pankonin Survey, No. 1,701, otherwise known and described as the east half of Section 4, B. D. V. & C. R. R. Co. Survey, No. 692, containing 320 acres more or less. The same property set forth by their voucher notation No. 427, of Wichita Royalty Company, dated October 8, 1925.

Also have check here dated December 21, 1925, payable to Knight & Hines, $50.00, balance cash payment on

one thousand acres, Archer County, Texas, drawn by G. W. Peckham, paid by the City National Bank on January 21, 1926. This is the Porter Ranch.

Check dated December 8, 1925, payable to Knight & Hines for $1,200.00, signed by G. W. Peckham, 1/8 one thousand acres Archer County acreage, Porter land; indorsed "Knight & Hines, W. T. Knight. by A. H. Heron, on December 21, 1925." These checks were deposited to the account of Knight & Hines.

January 8, 1926, Curlee land, $2,567.75, signed G. W. Peckham, paid on January 11, 1926. The proceeds of that check were deposited to W. S. Curlee.

January 15, 1926, J. T. Harrell, C. E. Basham, $2,201.22, signed G. W. Peckham, Vernon Royalty; indorsed J. T. Harrell and C. E. Basham, one-half deposited to the account of each of those gentlemen.

January 25, 1926, J. T. Harrell and C. E. Basham, $10,028.00, signed G. W. Peckham, dated January 25, 1926, indorsed J. T. Harrell and C. E. Basham, one-half of it deposited to the account of each of those men.

644 March 6, 1926, payable to J. T. Harrell and C. E. Basham, $5,060.00, signed G. W. Peckham, paid March 6, 1926, indorsed by J. T. Harrell and C. E. Basham, one-half of it deposited to Mr. Harrell and one-half to Mr. Basham.

March 31, 1926, payable to J. T. Harrell, $5,087.00, signed G. W. Peckham, indorsed J. T. Harrell and C. E. Basham; and one-half of it deposited to the account of each. That is the Stephens Royalty deal No. 2. All of those checks are Harrell and Basham on the Stephens Royalty.

Check dated September 23, 1925, payable to the Highland Irrigation Company, $3,869.25, signed G. W. Peckham, indorsed "Pay to the order of City National Bank, Wichita Falls, Texas, Highland Irrigation Company, No. 142." Paid September 24, 1925. The last check was deposited to the Highland Irrigation Company. My understanding is that when you asked me to testify to all moneys spent by Mr. Peckham for the benefit of Wichita

Royalty Company, that was my understanding, to the benefit or account of Wichita Royalty Company.

Mr. Rogers:

I am inquiring—and do not desire to be bound by any inquiry as to any payment made by G. W. Peckham upon his own account, for his personal purchase, either of Marlborough Addition or for Texas Investment Company, or for properties which he acquired as an individual and those others from which he undertook to sell to the trust estate, and to the extent that the record reflects
645 that any evidence has been suggested, or concerning which, I move to strike it and object to its introduction for the reason that the Royalty Company or its trustee can be bound by none of such transactions, that they relate to and are evidence of dual dealings between the trustee as an individual and himself as trustee, and for that reason, and due to the misunderstanding between counsel and the witness, the trust now moves to strike the evidence.

(Which objection was by the Court overruled, to which the defendant excepted.)

Mr. Morrow:

If the record should be regarded as withdrawing the questions, we want the evidence in as coming from us.

Mr. Boone:

That is correct. We want it to remain in the evidence, and we adopt the questions and answers, and offer them in evidence ourselves.

Mr. Humphrey:

We offer the same testimony that you seek now to withdraw.

Mr. Rogers:

And to its introduction I make the same objection last above recited.

(Same ruling.)

The Witness:

There were no other items than those I have testified about heretofore, that were deposited to the account of Wichita Royalty Company, that I know of.

You asked me this morning if the Texas Investment Company issued its check for $75,000.00, dated
646 on or before February 10, 1930; I have here check dated February 10, 1930, drawn on the City National Bank payable to Gray, Harrell & Scannell, $75,000.00. Says, "Marlborough Assets $65,000.00, R. E. D." I imagine he means, "To reduce capital stock $10,000.00, $75,000.00." Signed Texas Investment Company of Wichita Falls, special by A. B. Duncan, and on the reverse side says, "Credit Notes." This check was paid by the City National Bank on February 10, 1930. I don't know what note the bank credited the $75,000.00 item on; I have the note somewhere here in my papers, and I did not find it awhile ago, that was in payment of, I have the ledger sheet, but I can find both. I don't remember when the note was originally executed. I have the note here now, dated August 29, 1929, on the bank, $75,000.00 with interest from date, signed Gray, Harrell and Peckham. That is-J. T. Harrell, paid January 10, 1930. The check itself was dated February 10, it is perforated paid February 10, 1930. I have the investment company liability record here showing all the additional amounts they owed during that period—I want to make a correction—I said the note was paid January 10, but it is February 10. The liability of the Texas Investment Company, to the plaintiff bank on August 29, 1929, was $44,370.00, that principal balance continued during August, was first reduced on December 31, to $43,940.33. On January 29, 1930, they owed $44,370.00 and on May 6, 1930, they owed $44,080.00. The liability that I am now talking about as reflected by this liability ledger, is the liability
647 record of the then liability of Texas Investment Company, a corporation, to the plaintiff bank, in

addition to the $75,000.00 note that I show to have been paid. That was not a note of the Texas Investment Company, it was by three individuals, one of whom was Mr. Harrell. The Texas investment Company note, the liability record which I have identified and testified from J. T. Harrell, G. W. Peckham were indorsers, and J. A. Kemp. Those indorsements continued through the period asked about, August, 1929, until February, 1930. I have Mr. Harrell's personal liability record here for the year 1929. Mr. Harrell's personal liability to the bank as reflected by their liability account, beginning with the first of August, 1929, was $22,049.32. September 16, it was $22,051.21; September 21, it was $19,995.22; November 1, it was $30,064.11; November 29, it was $26,054.11; December 13, it was $20,015.22; December 27, it was $21,016.55; January, $20,015.22; that is January 2, 1930. February 1, 1930, $19,946.66. During that time I could not tell you whether Mr. Harrell was secondarily liable to the bank upon any other indebtedness than the Texas Investment Company or not, because I have not gone through the records to see at that time. I do not know of any other.

I can have by tomorrow a copy of the third quarterly report made by the comptroller of currency in 1929.

As to the manner in which checks pass through the bank and are returned to the customer, I will explain the mechanics of it; there is a bookkeeper assigned
648 to a certain ledger, offset to his, a bookkeeper assigned to the next ledger, so, for instance, one bookkeeper has the A's through the E's, the next bookkeeper will pick up at the E's and go through the H's, these both post together. One boy posts his ledger, and then he will post the other man's statement, and there will be two separate books there balanced against each other. Each man has his own machine, and the bookkeeper No. 1, will post bookkeeper No. 2's statement, and bookkeeper No. 2 will post bookkeeper No. 1's statement, and they will use their own machines—of course, all of the machines are alike—but one man uses one machine constantly. In other words, all ledgers are posted first,

then they will turn around and start on the statement and post all of the statements. The transactions are completed each day, bringing the two forward.

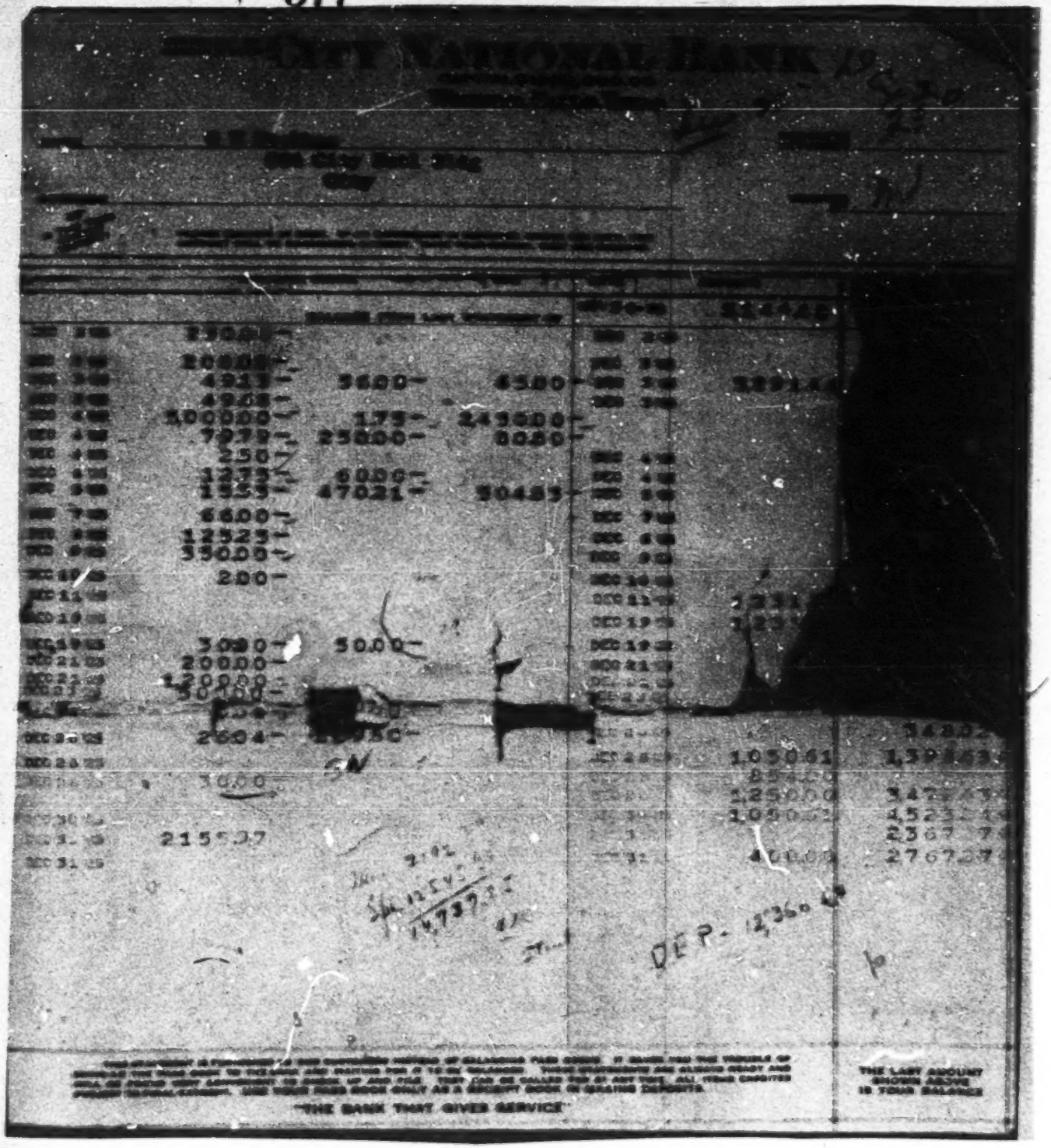
Mr. Rogers:

We offer these statements in evidence, and ask that they be photostated.

(Marked "Defendant's Exhibits 19 and 20," as follows:)

City National Bank

THE LAST AMOUNT SHOWN ABOVE IS YOUR BALANCE



CITY NATIONAL BANK

"THE BANK THAT GIVES SERVICE"

651 These pencil notations were not on the statements at the time they were made, the only notations at that time was the number of the check, and who verified the statement, his initials. The dark figures at the bottom is a new ribbon put on the machine.

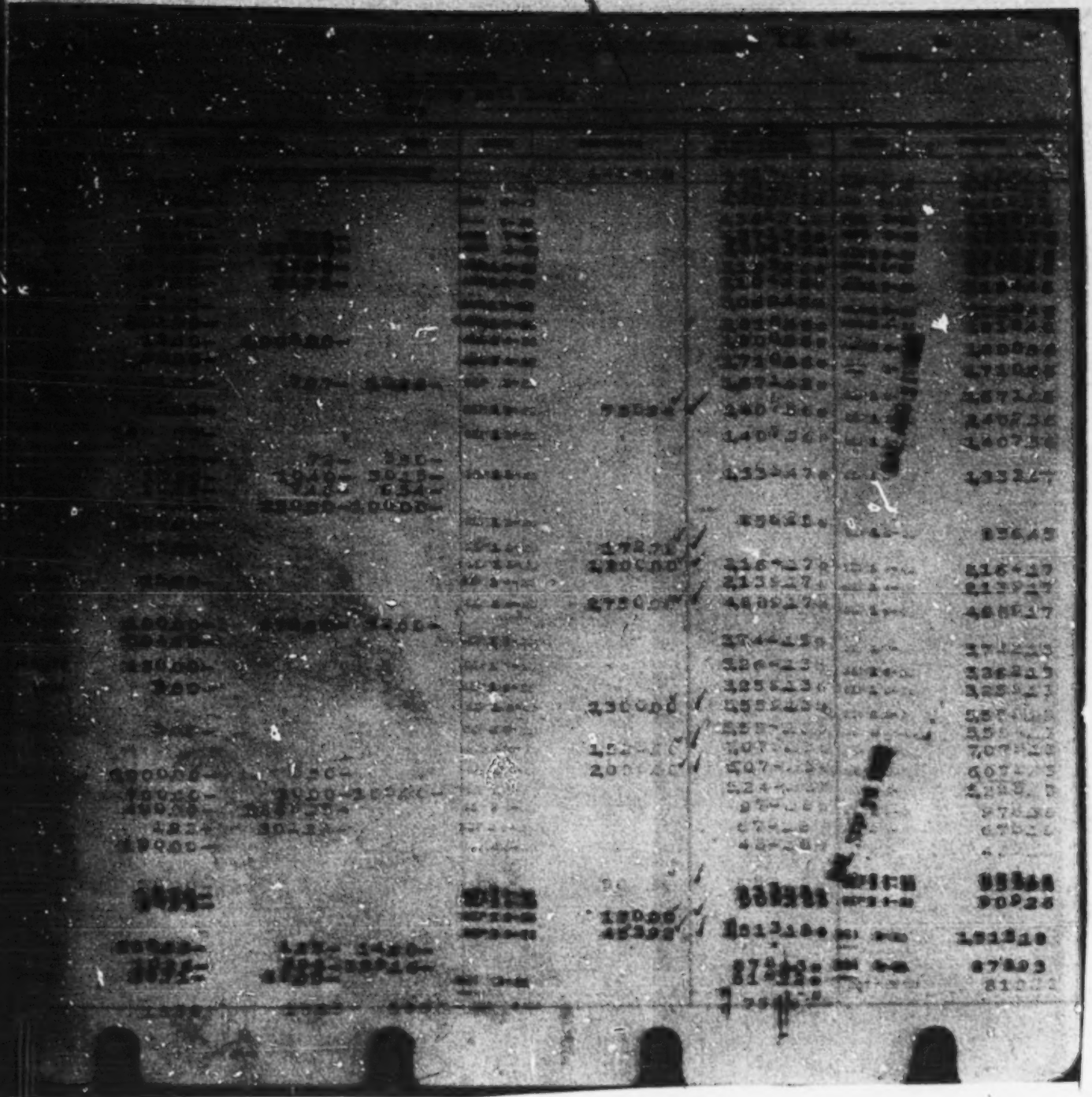
I have a list of the borrowings in the bank.

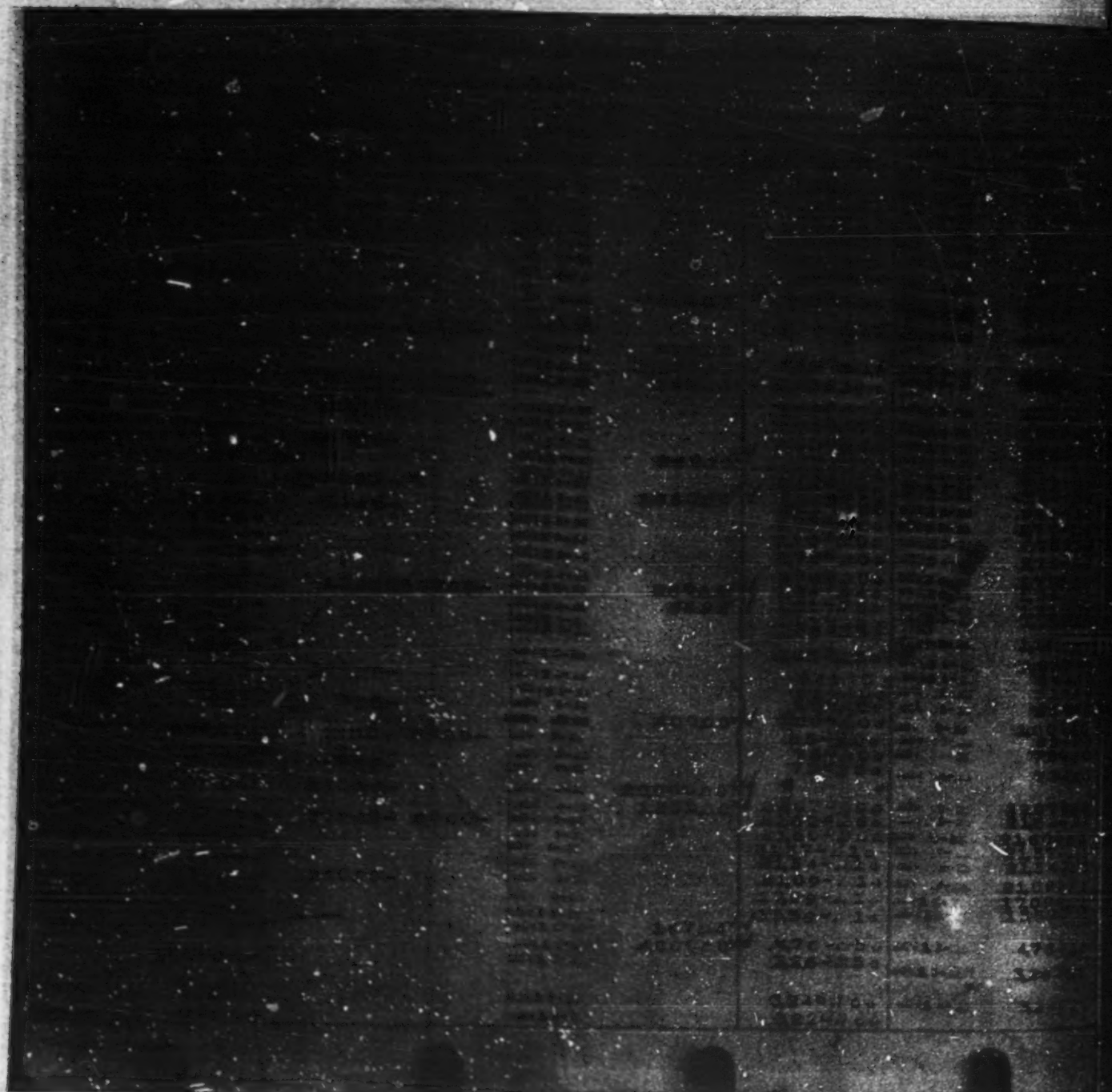
Defendant's Exhibits 19 and 20 were loaned to us by the administrator of the estate of G. W. Peckham, one sheet is torn, and it has become that way since we got it by handling. Our ledger reflects the same thing as the statement in respect to the checks and balances and deposits for those months.

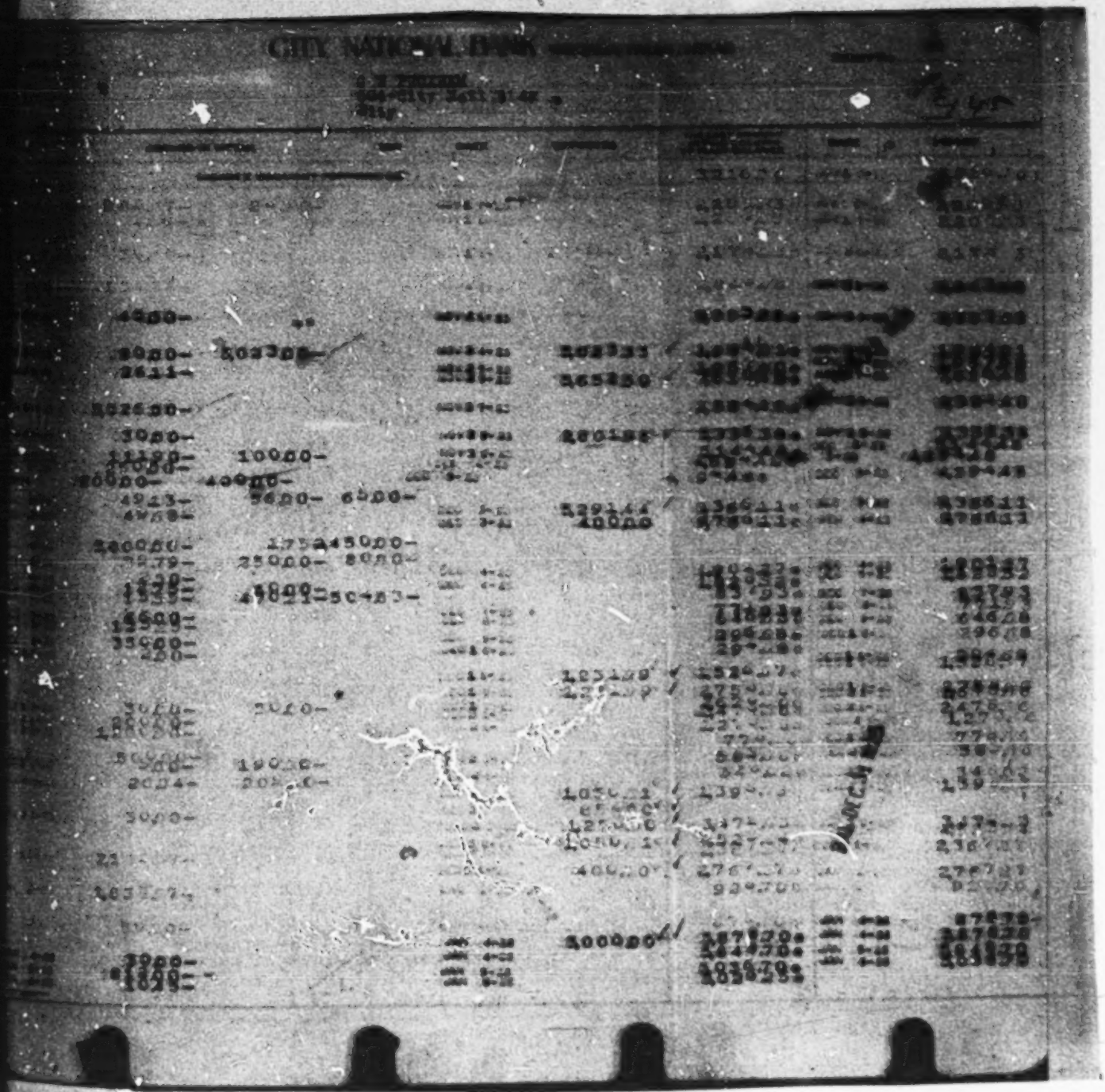
Mr. Humphrey:

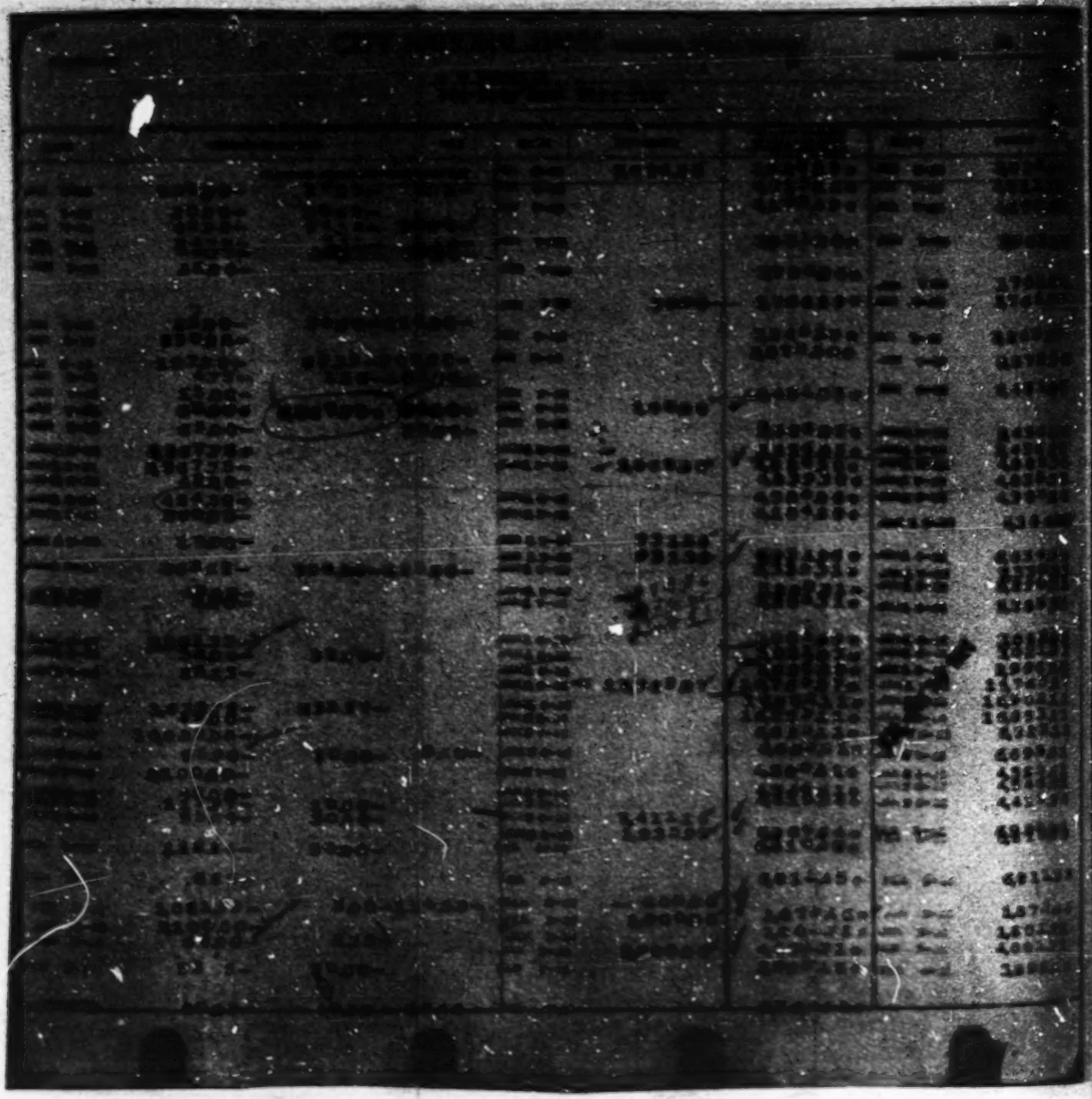
In order to show correctly what those figures were that is given, we offer in evidence in connection with those two statements, the bank ledger sheets for those two months, and ask that they be photostated.

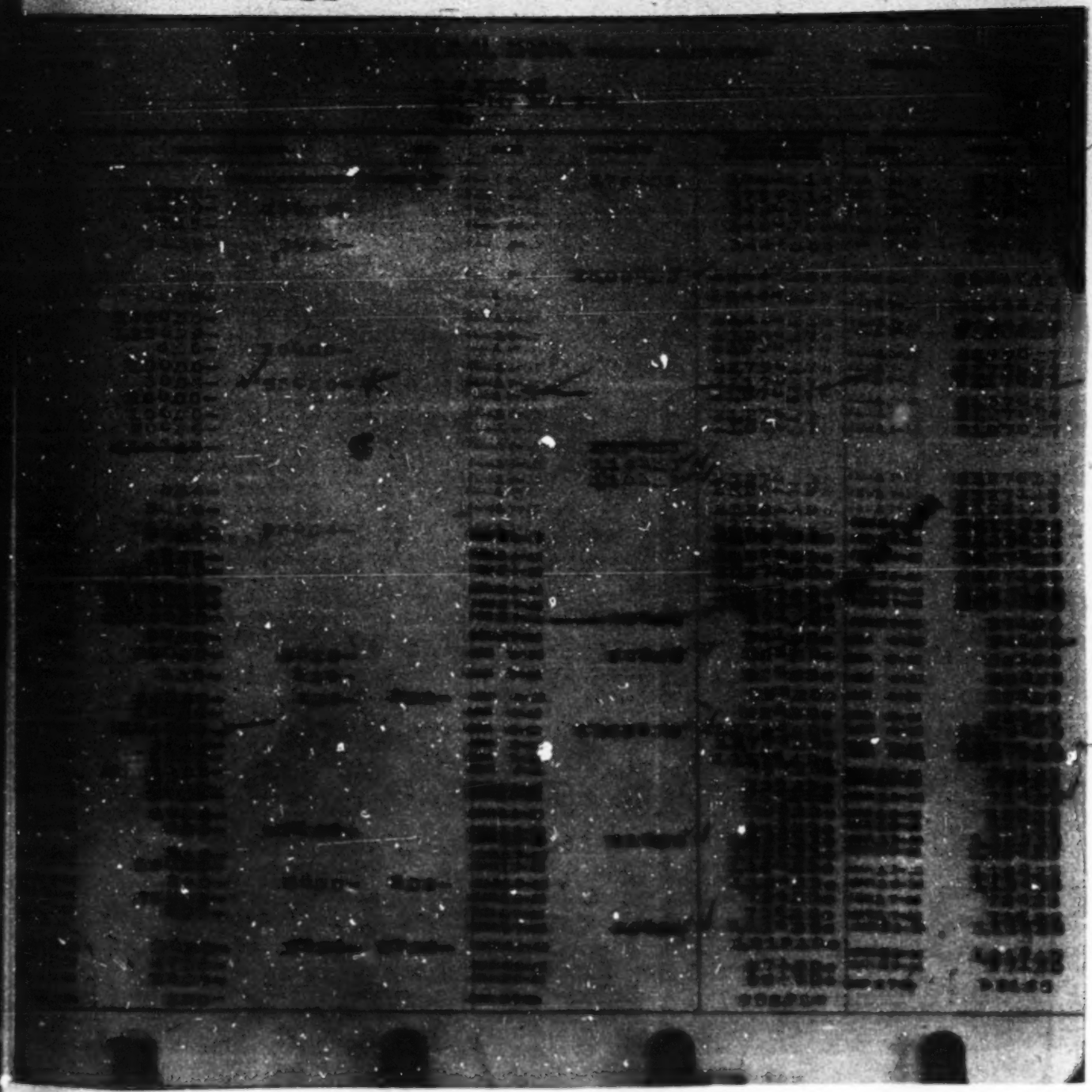
(Marked "Plaintiff's Exhibits 44 and 45," and reading as follows:)

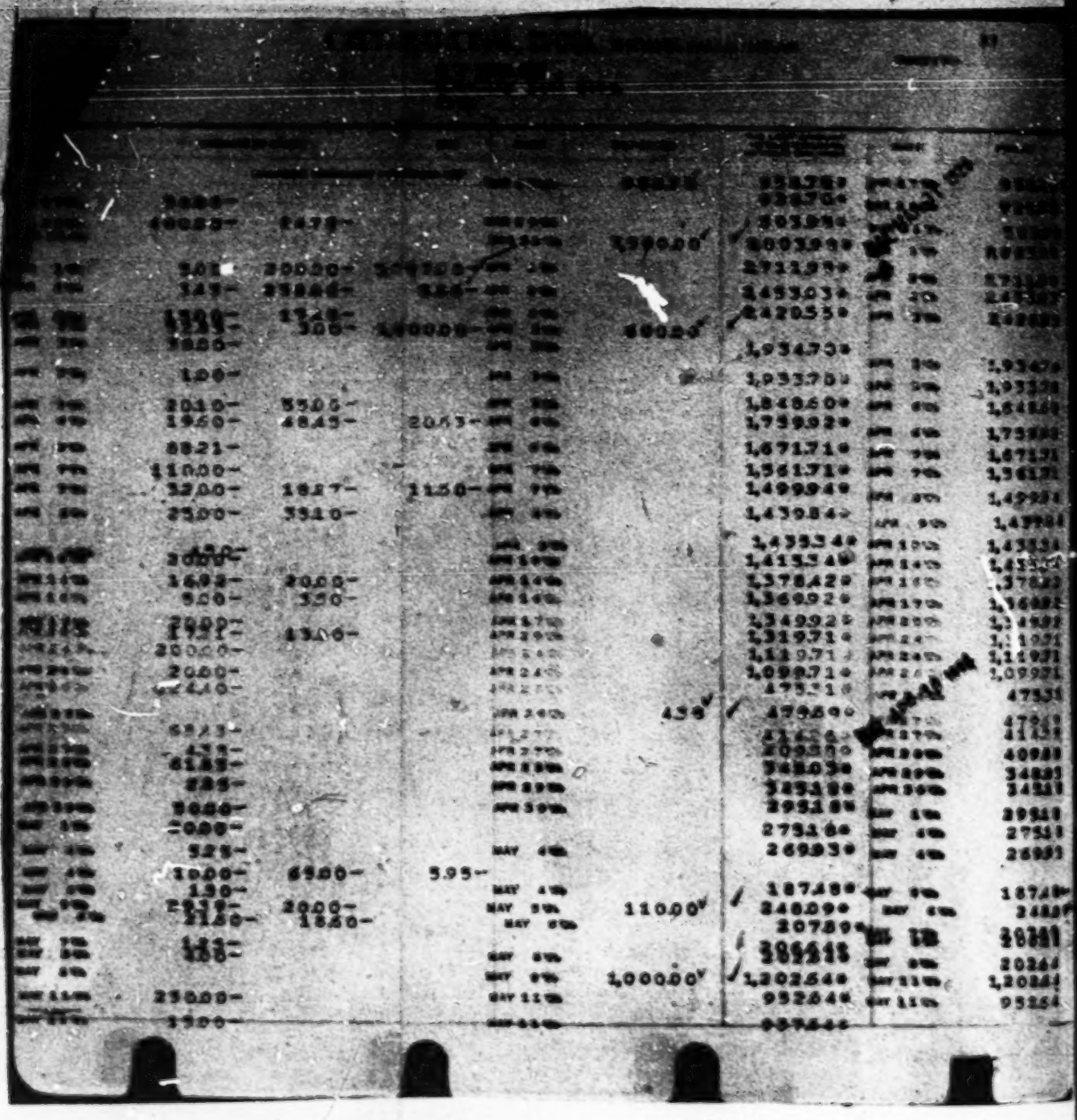


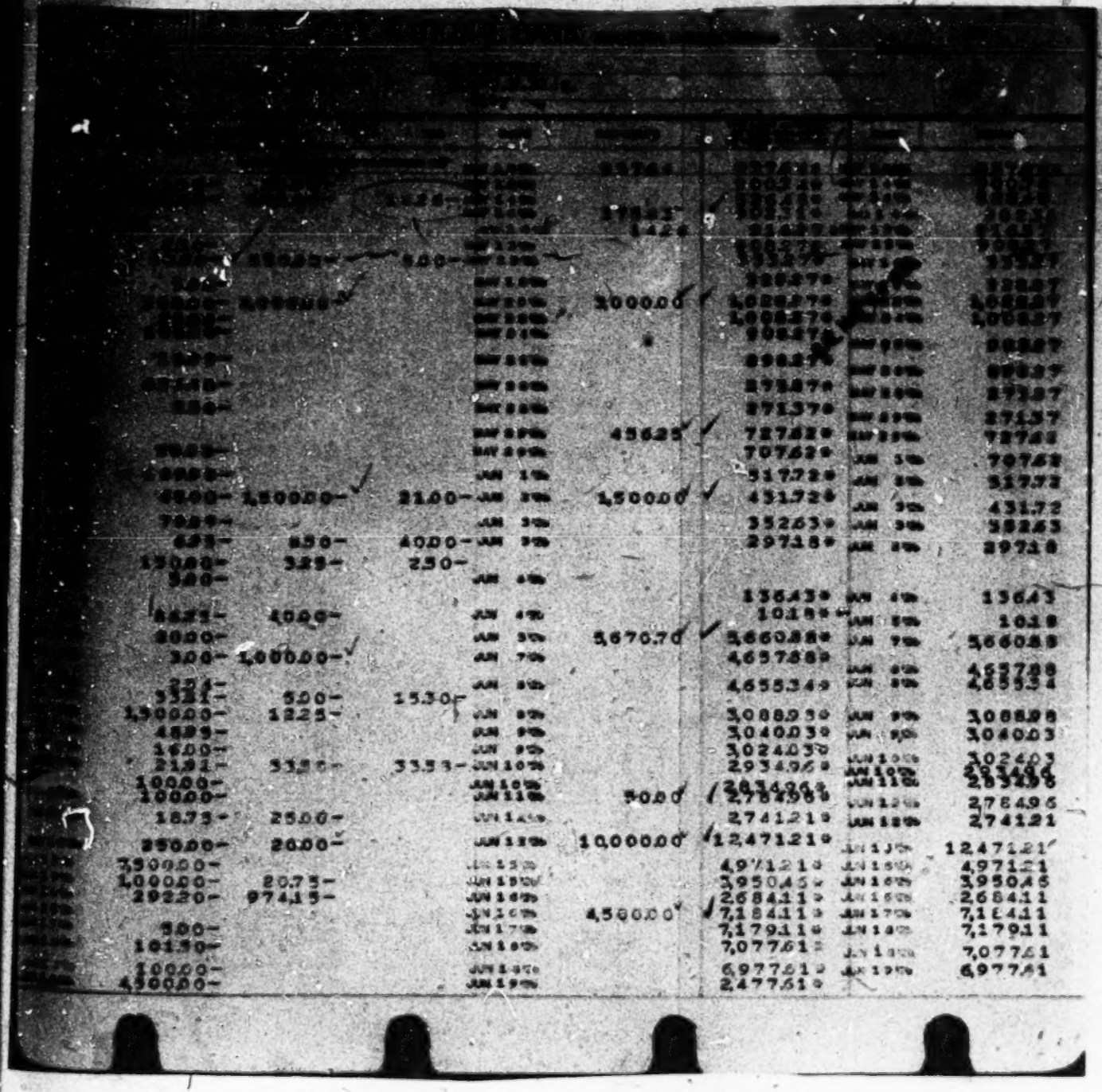


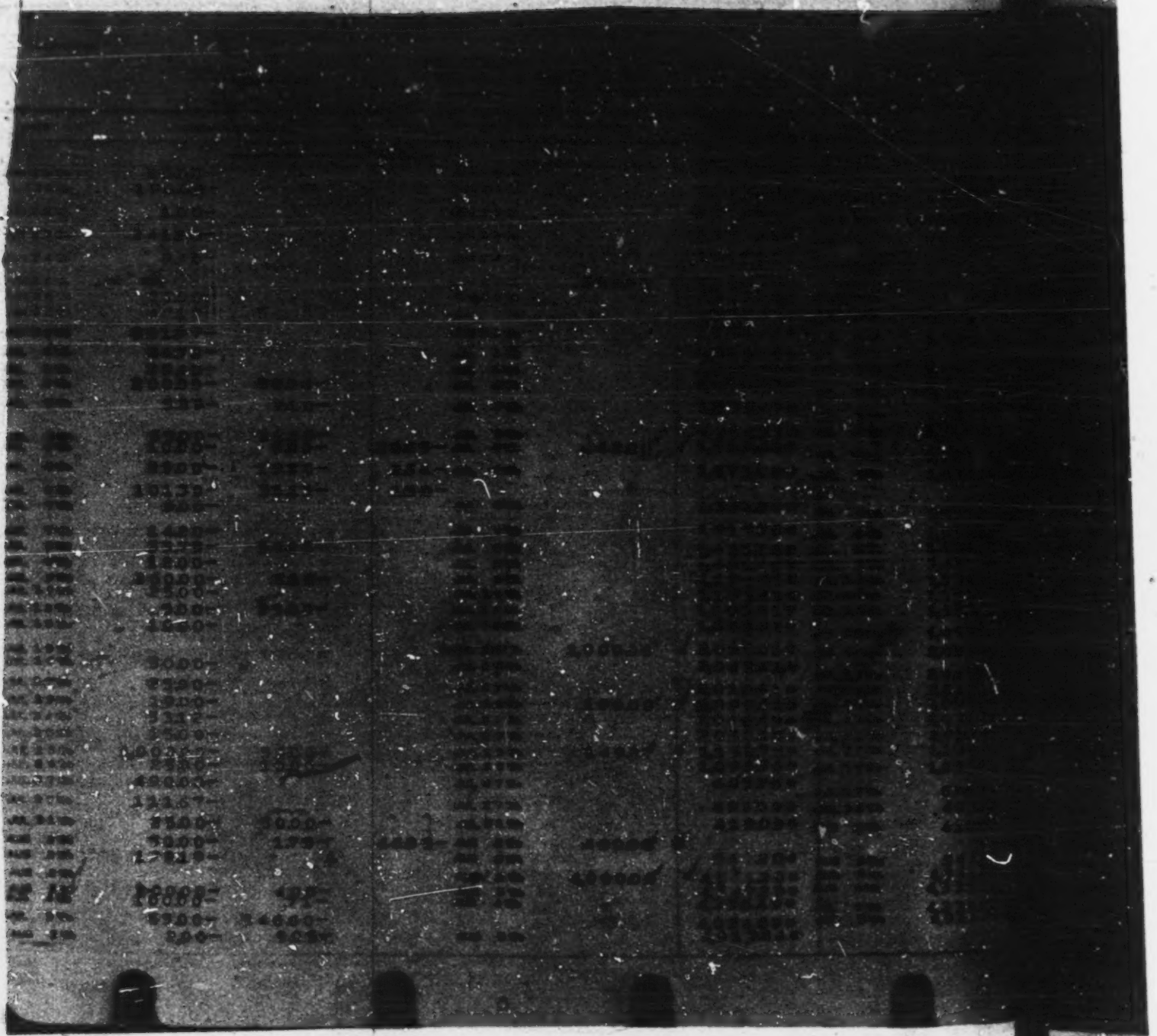


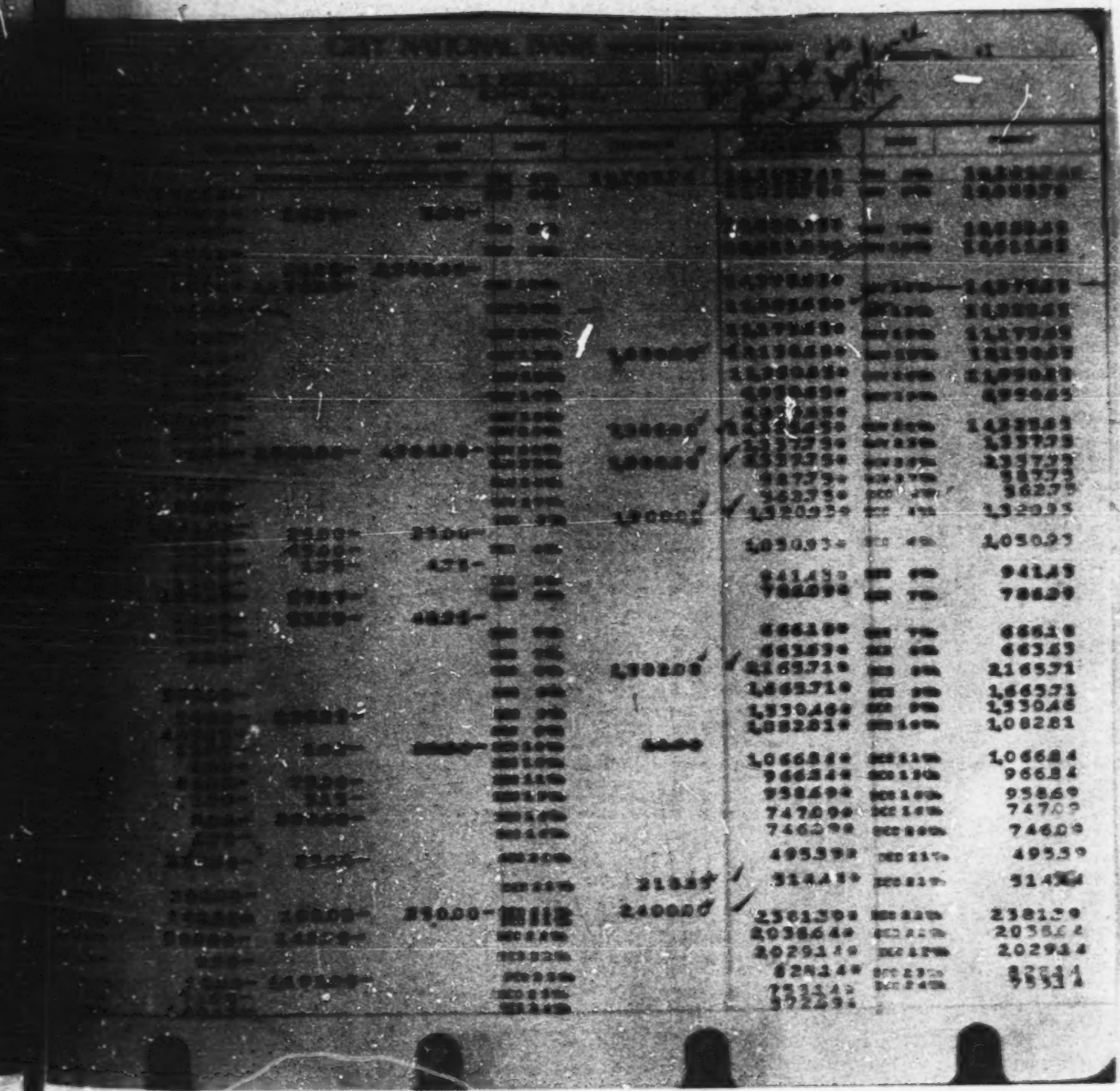


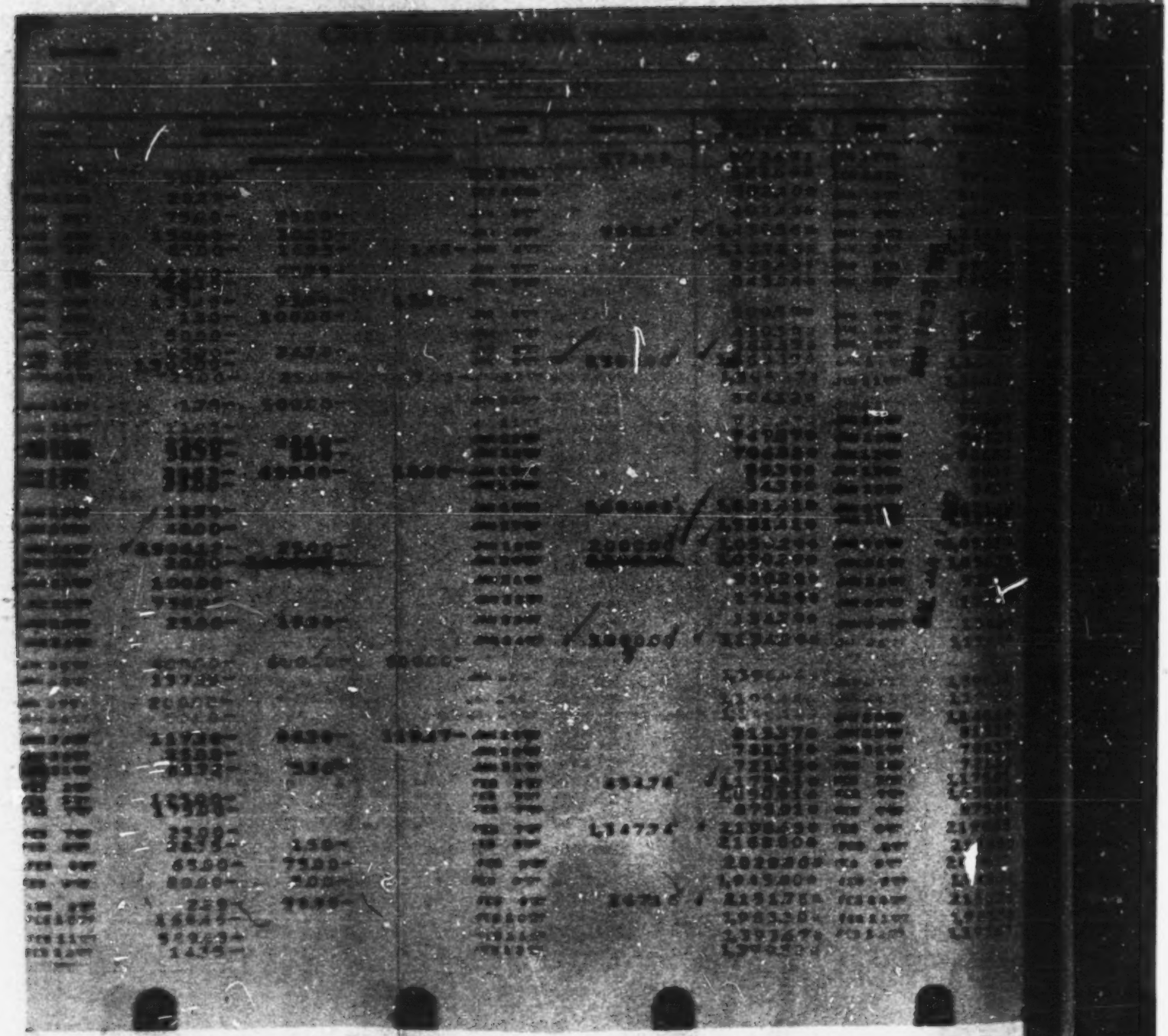


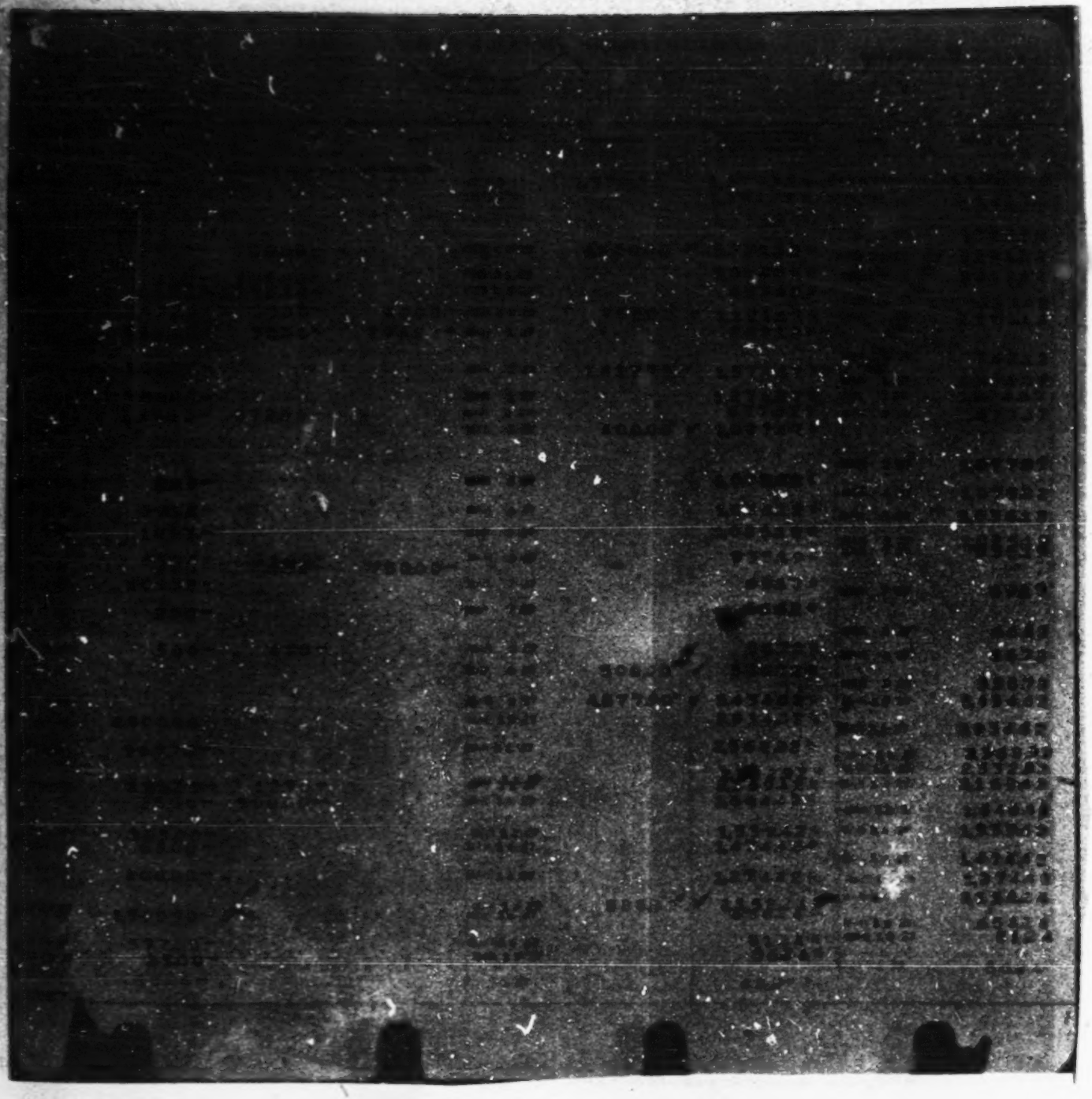


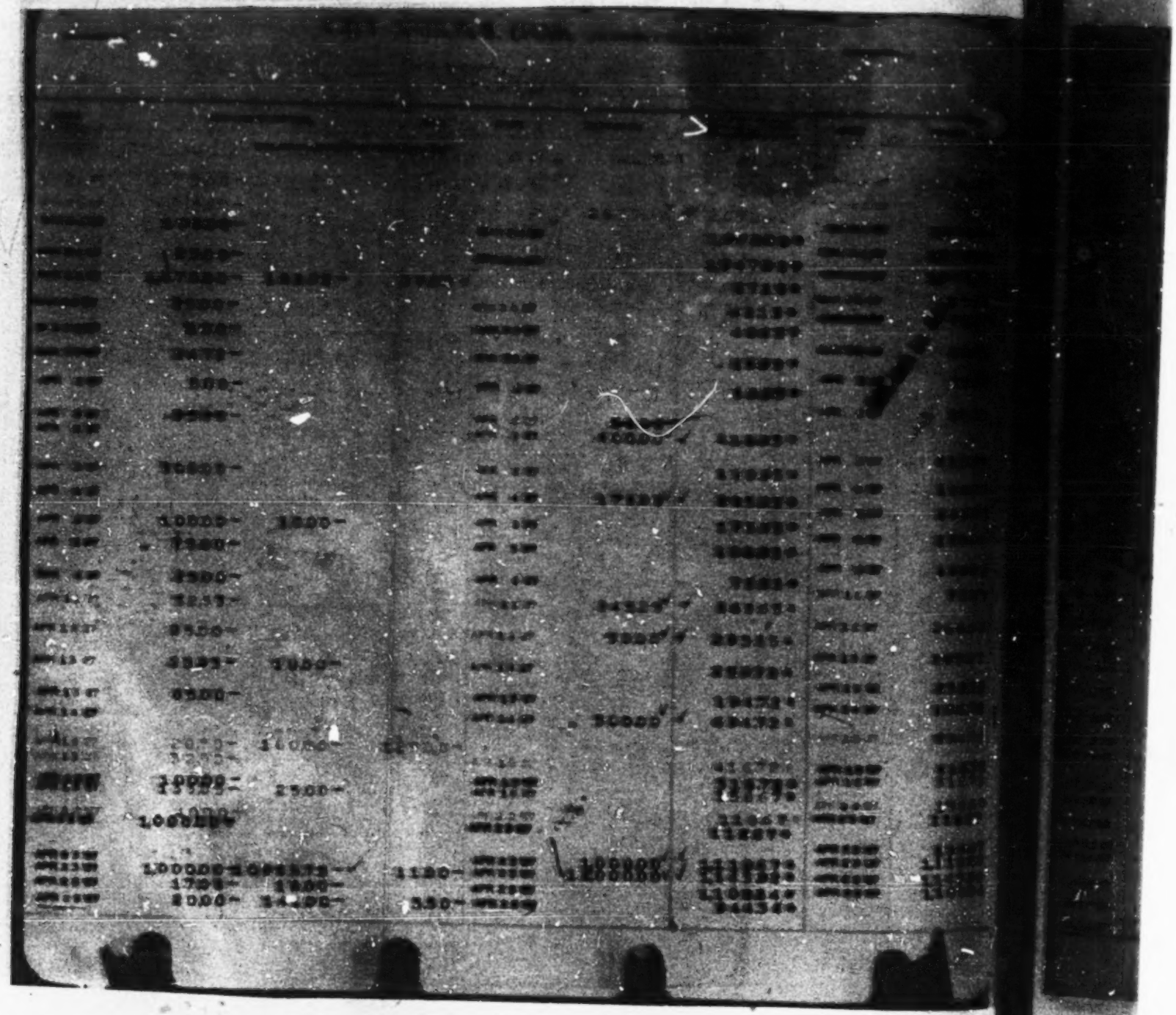


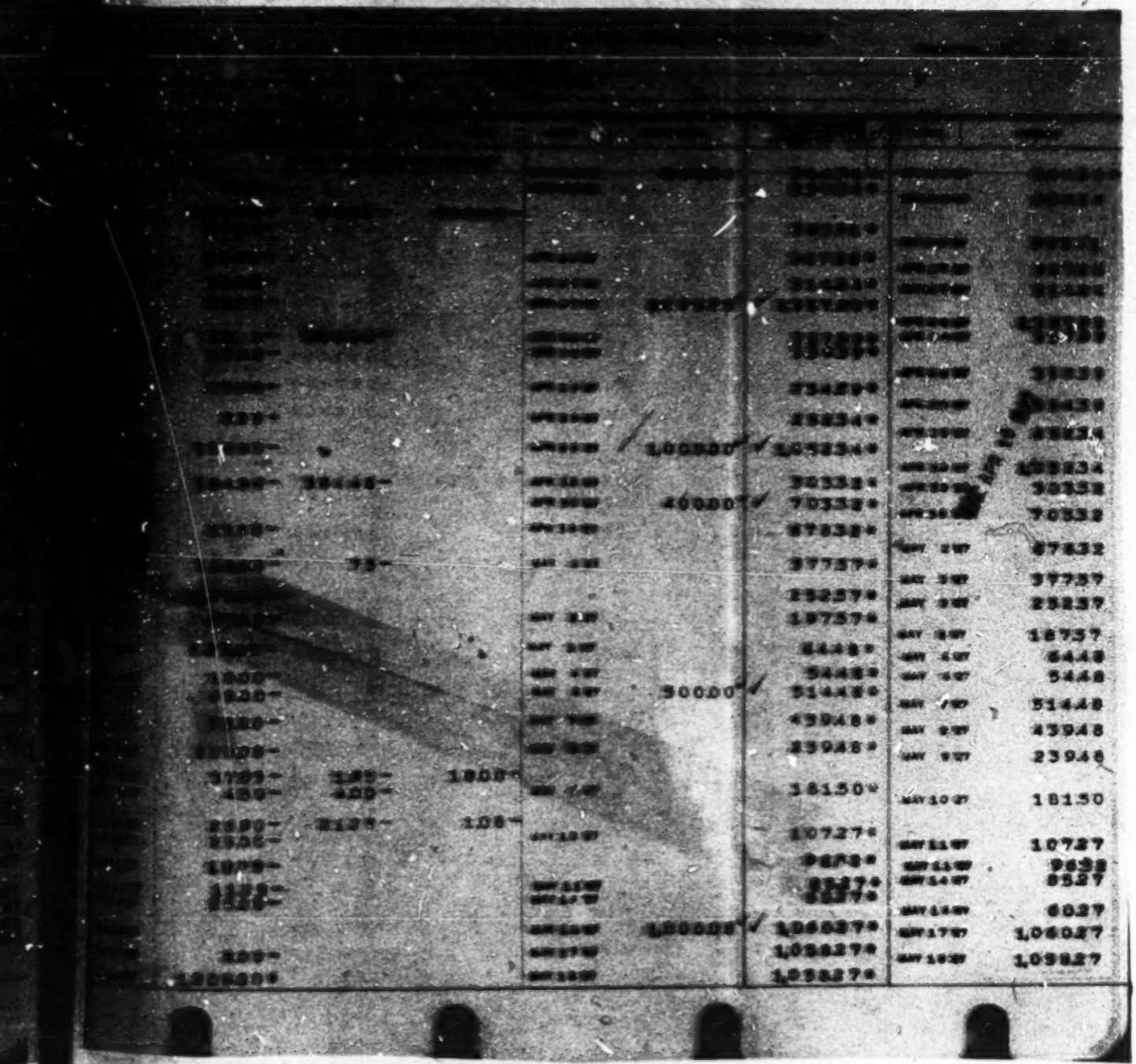


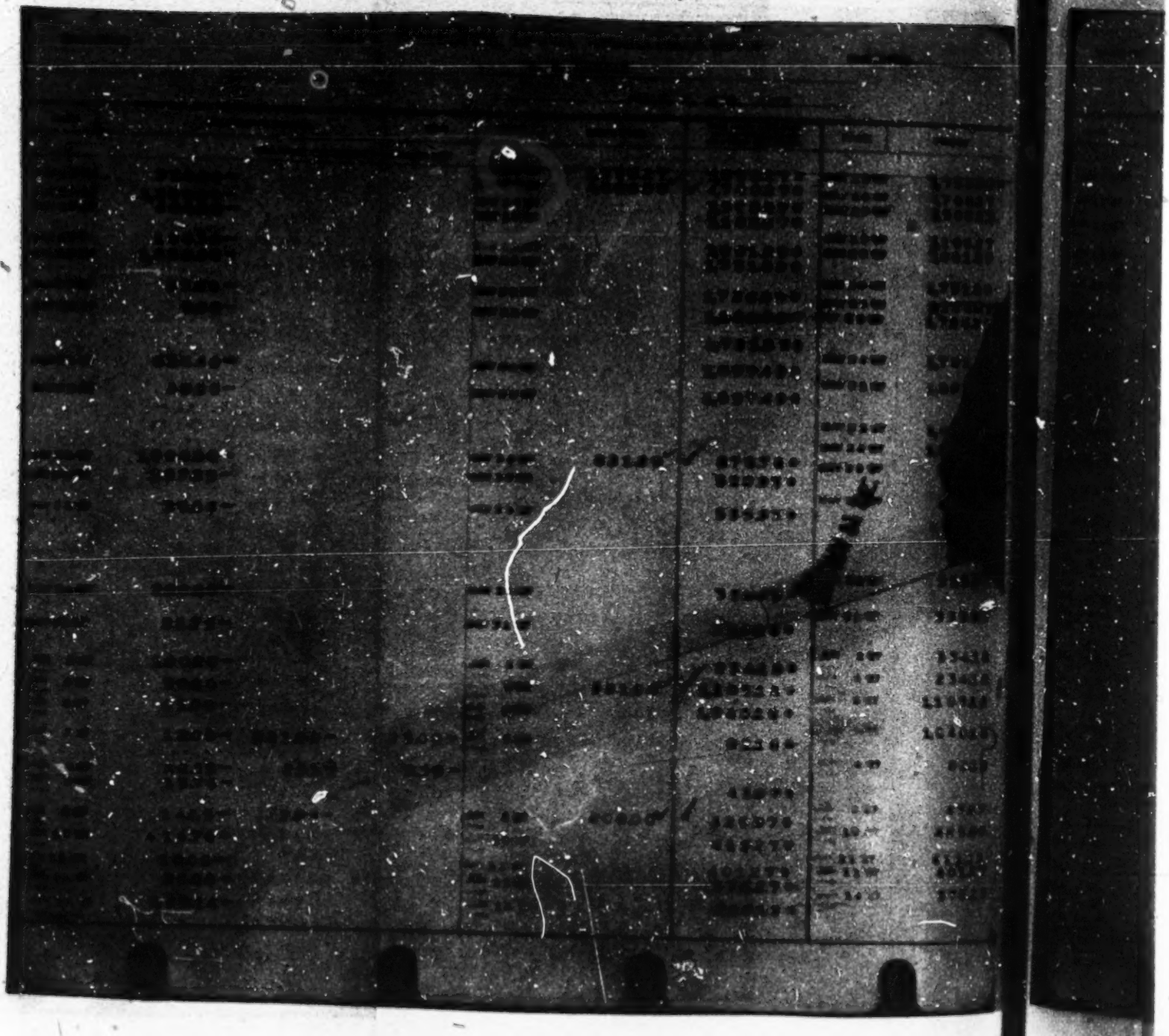


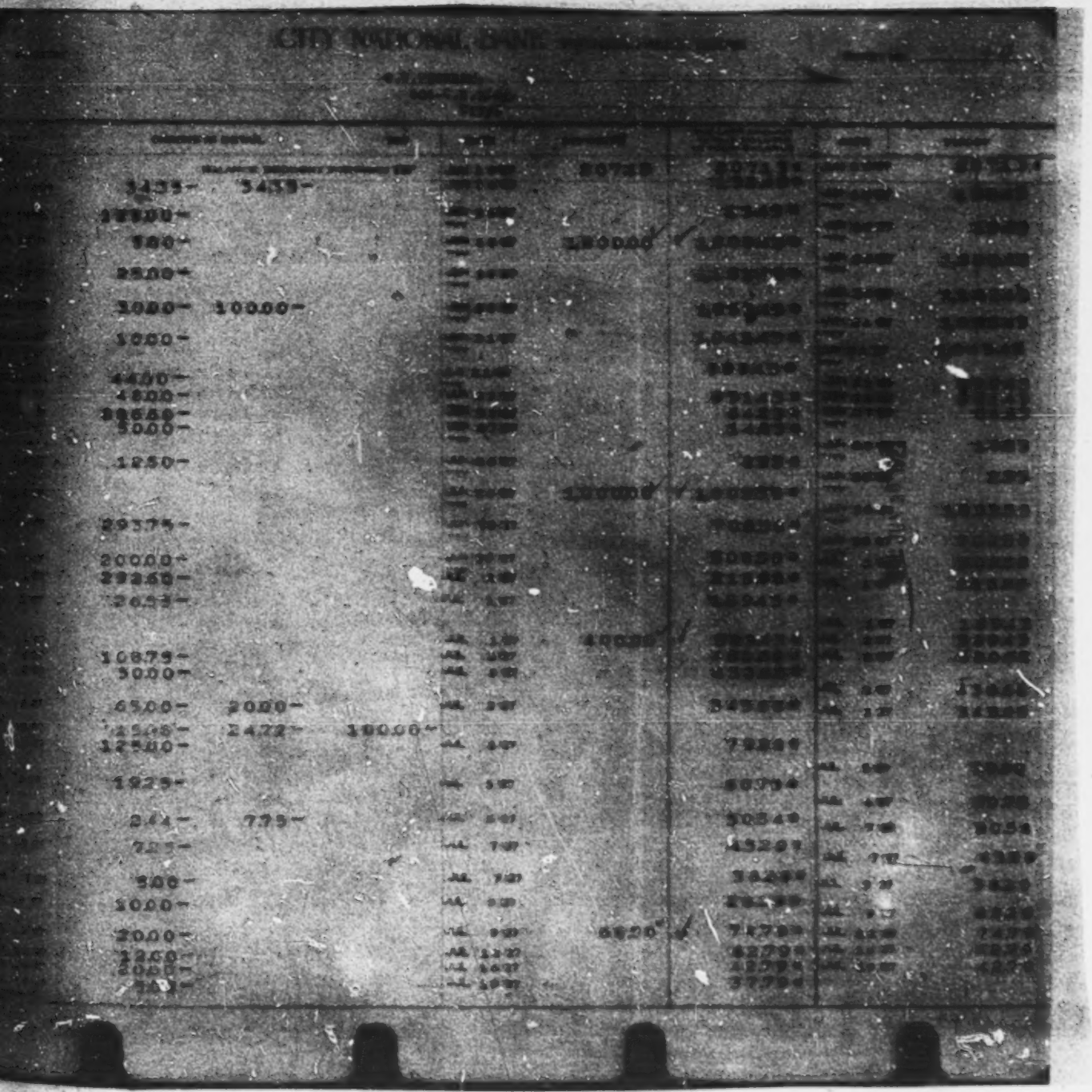


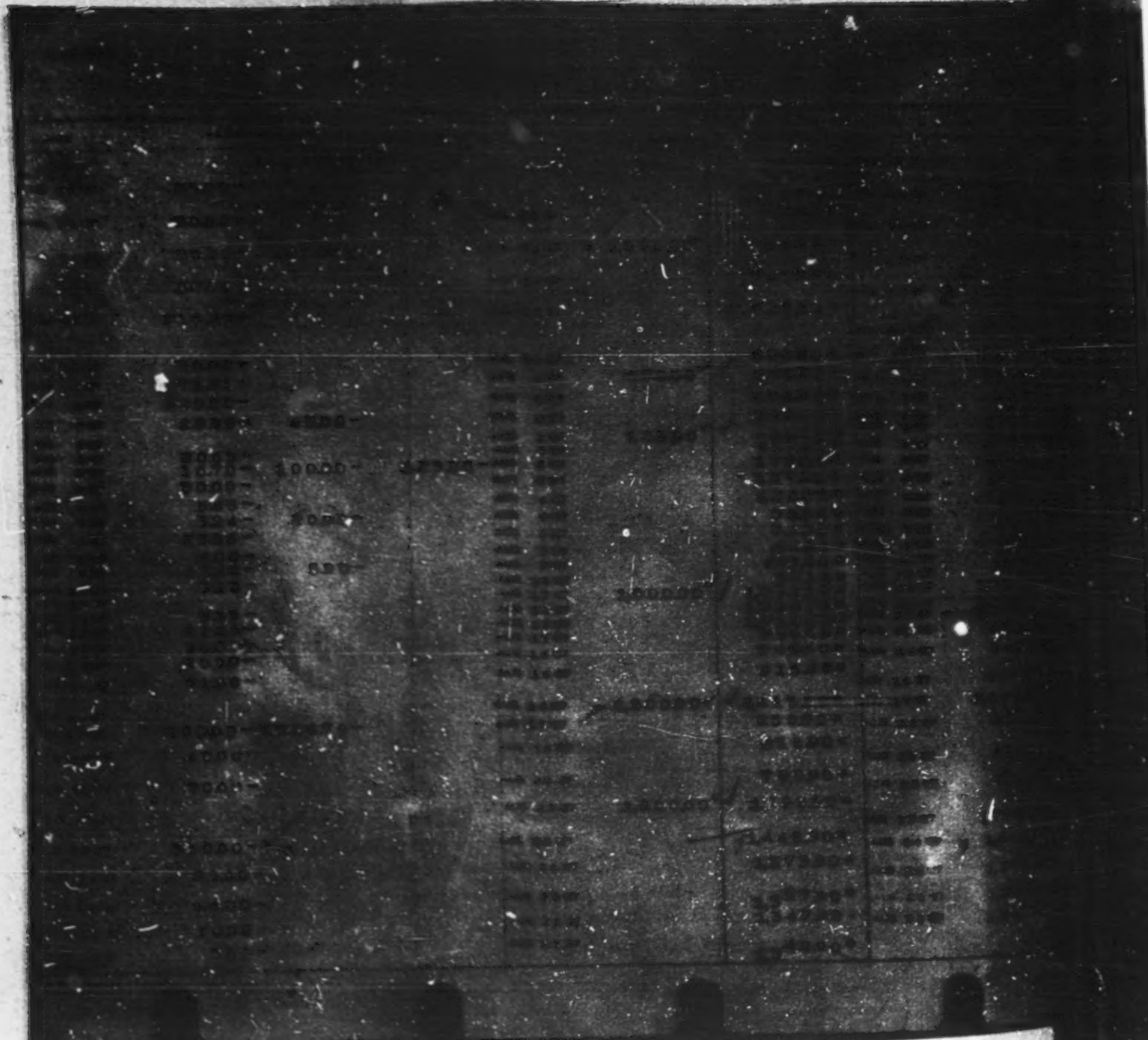


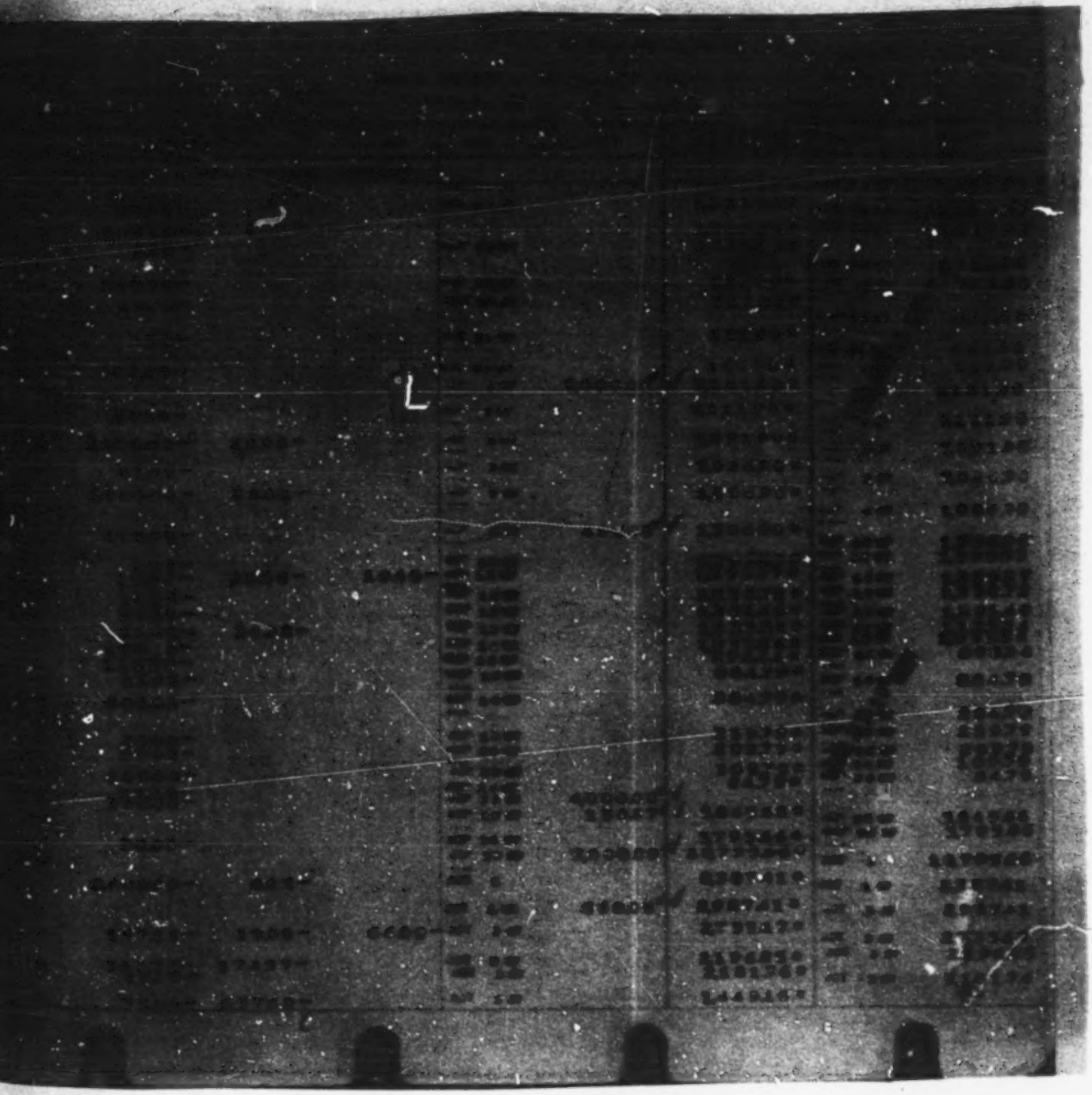


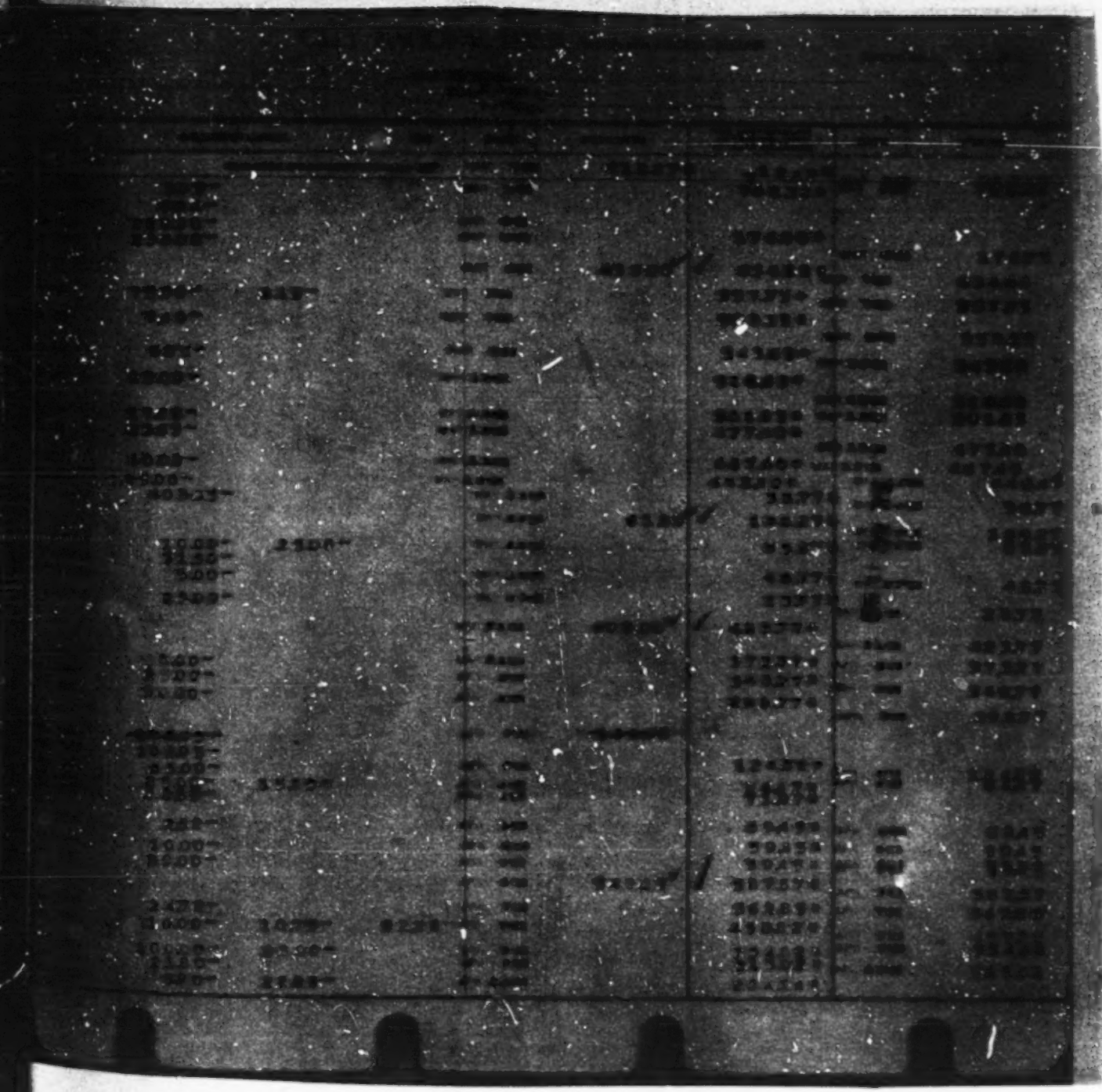


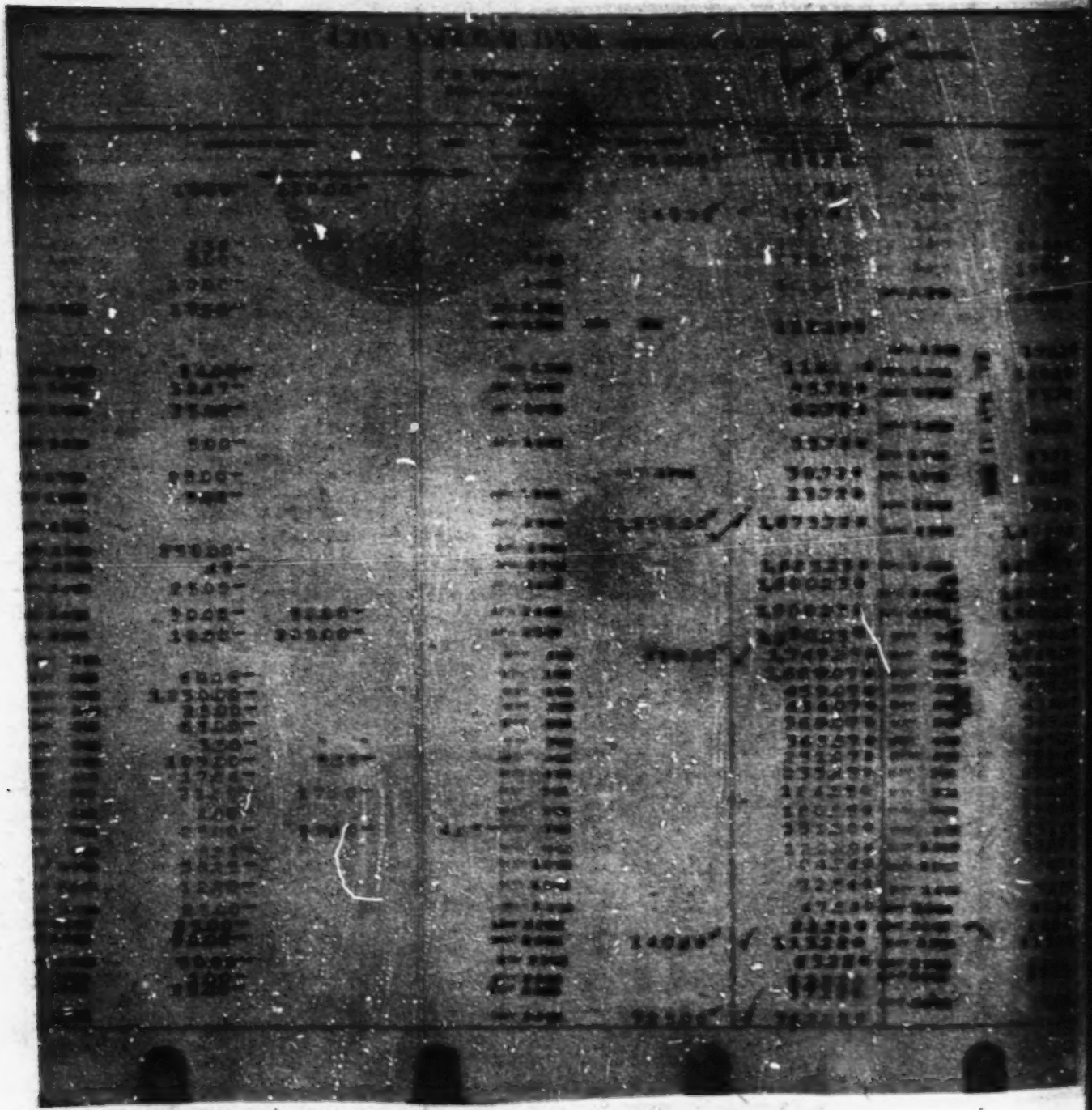


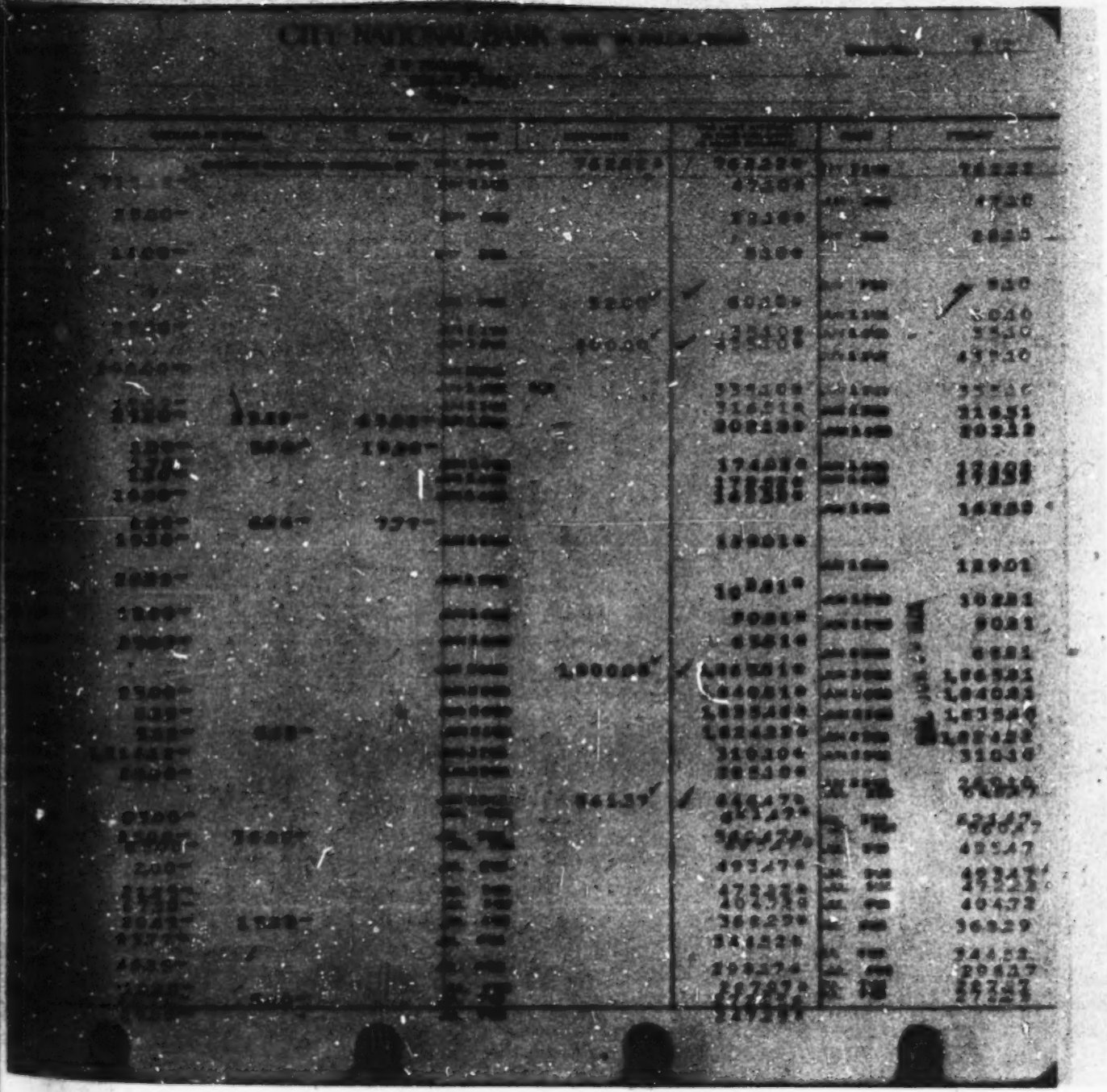


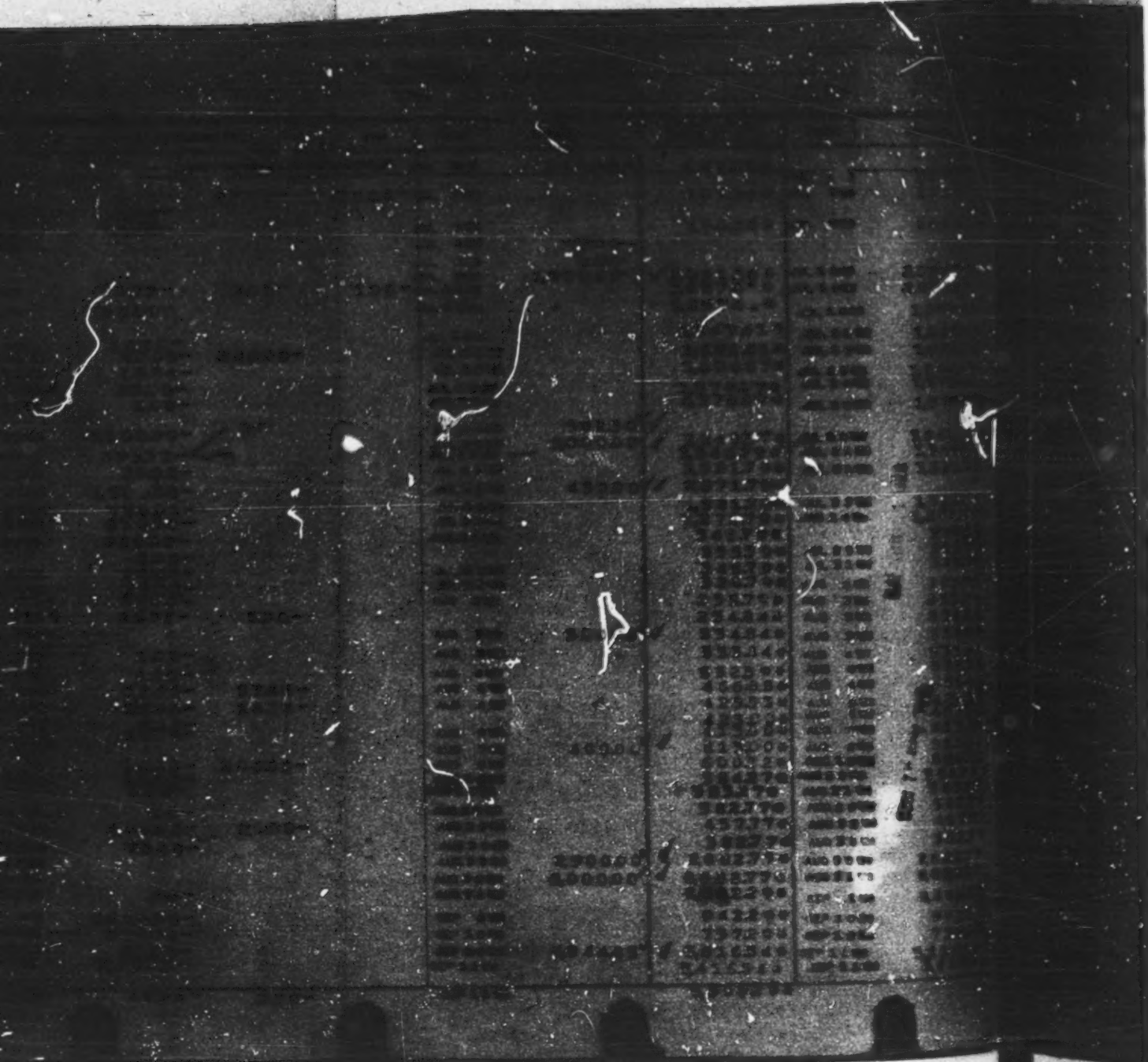


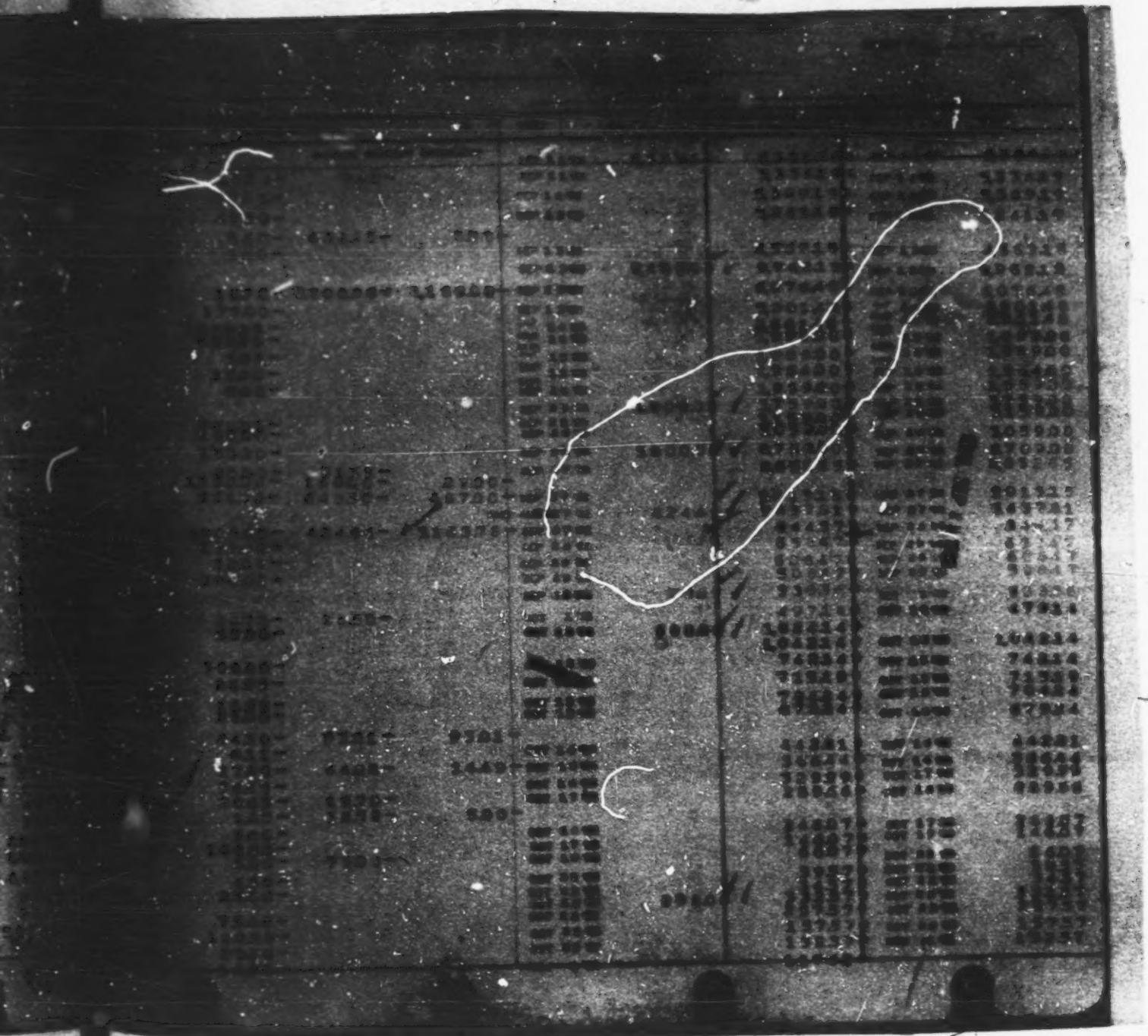


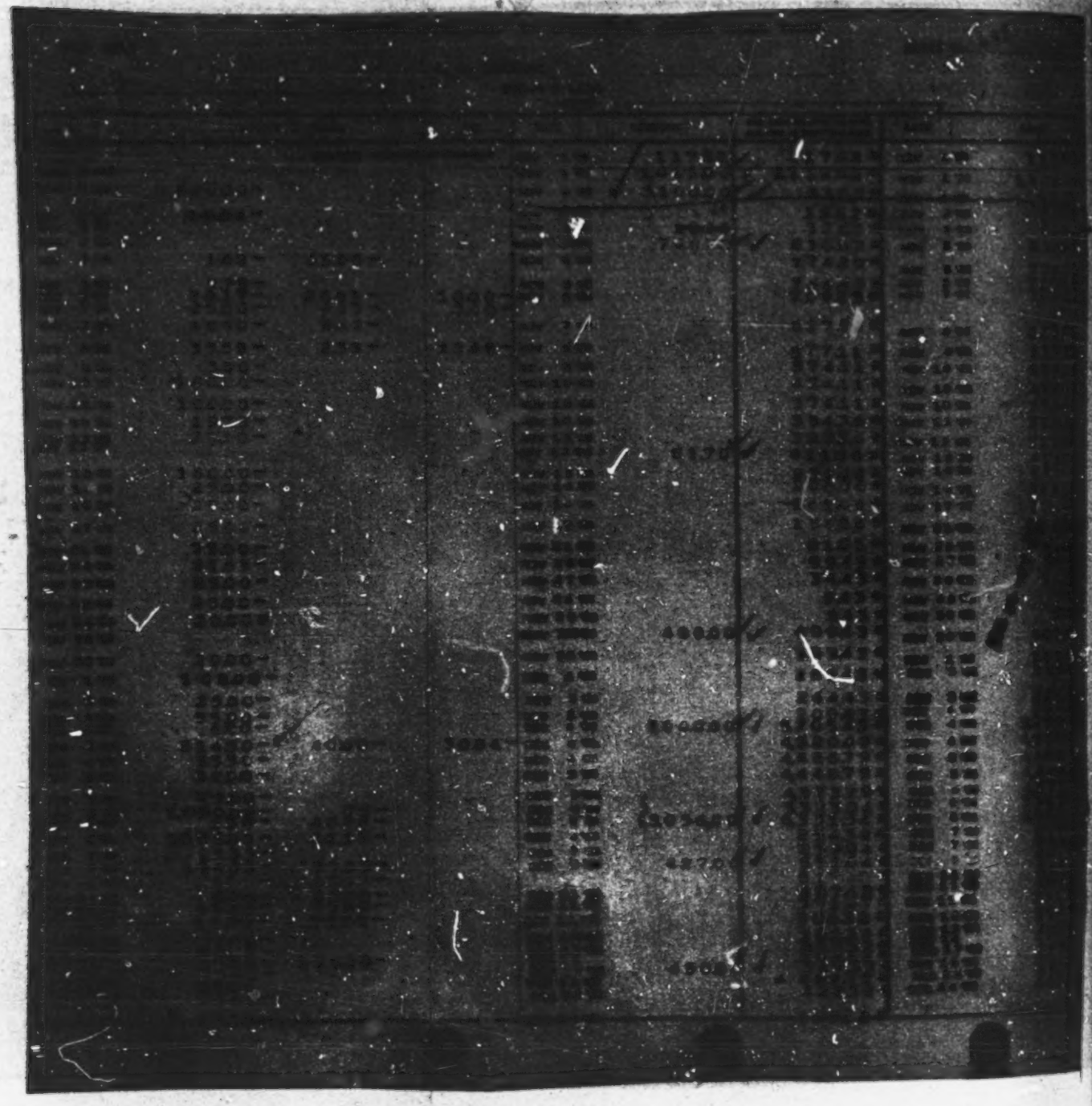


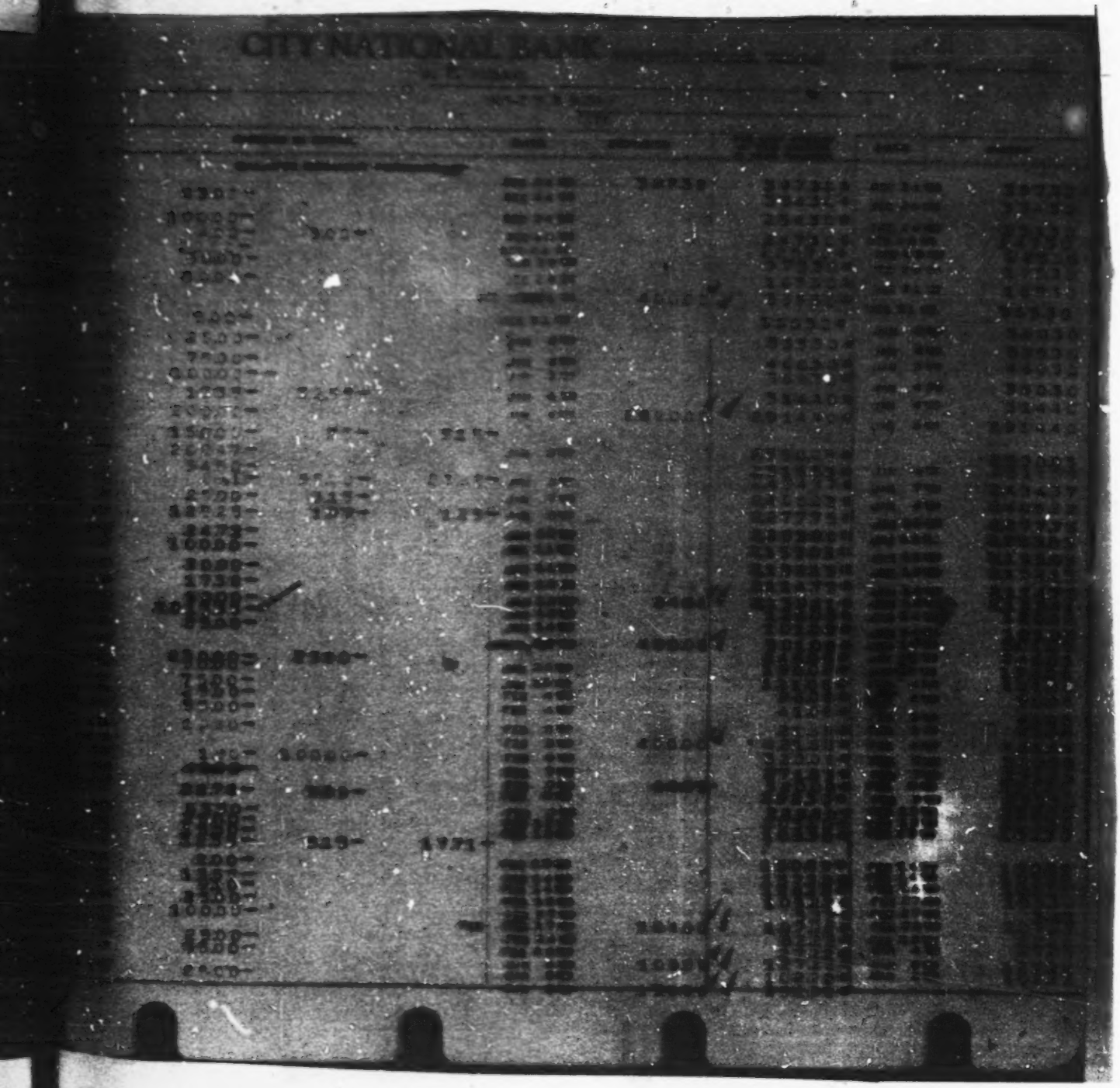


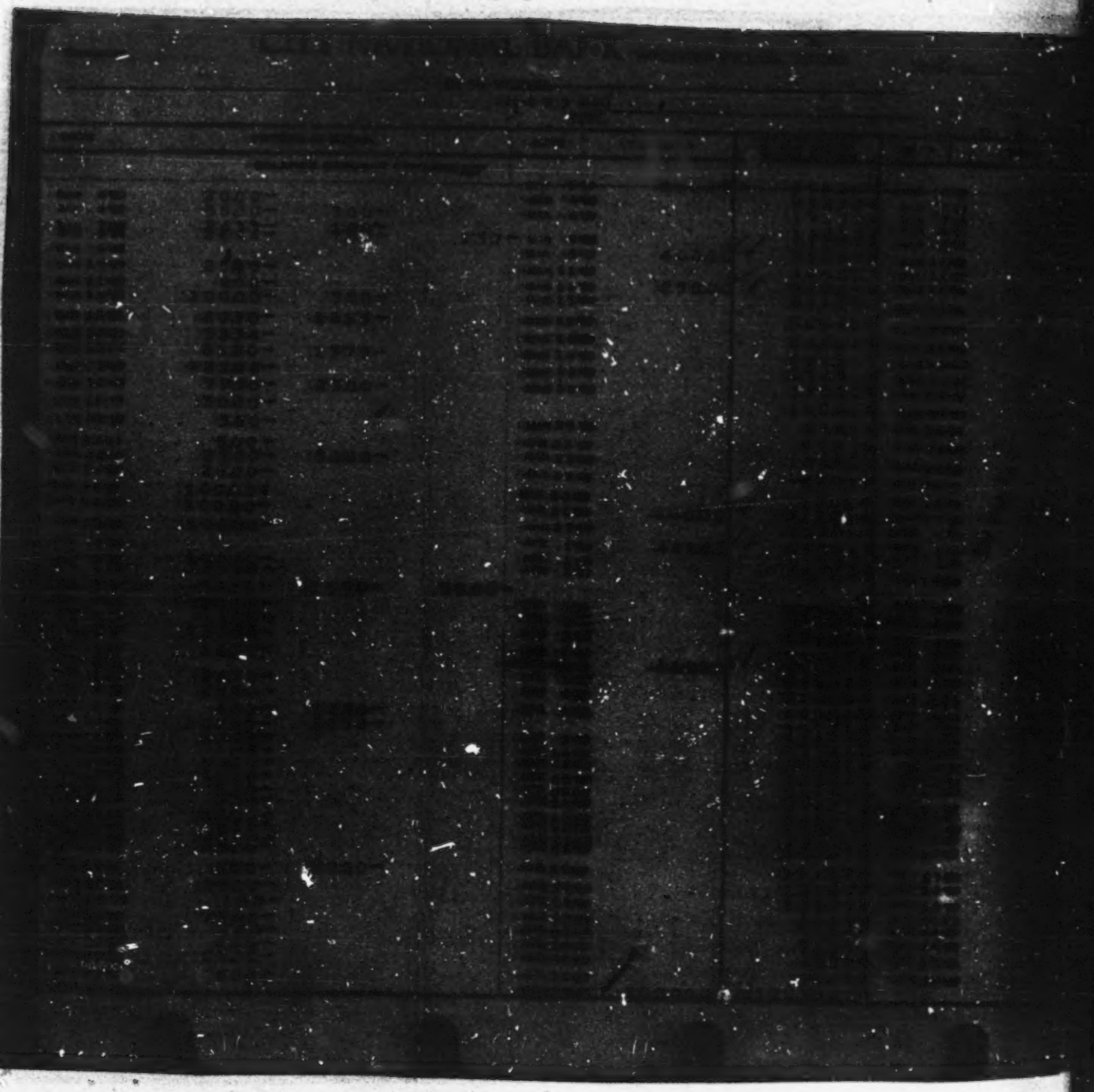


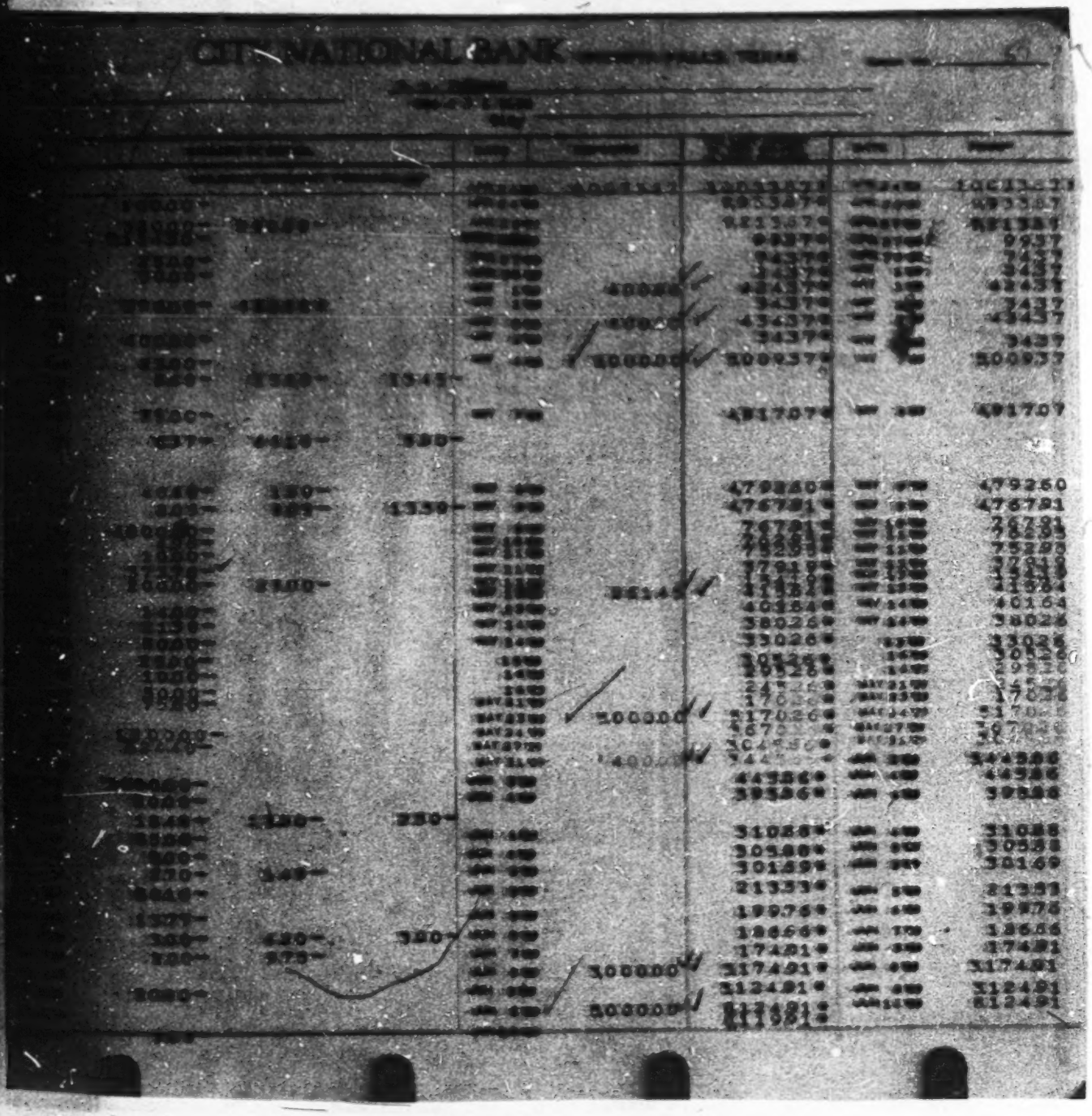


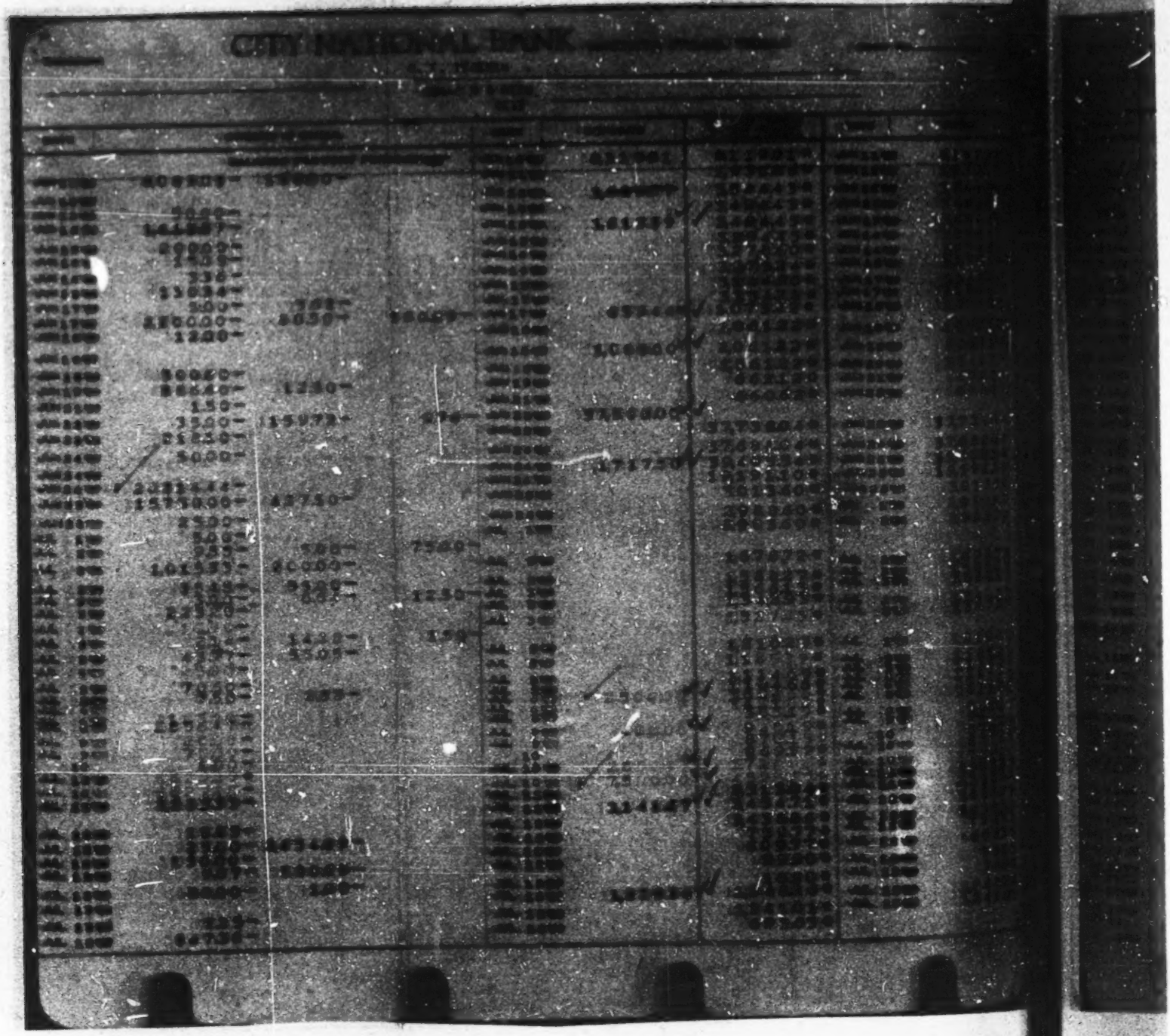


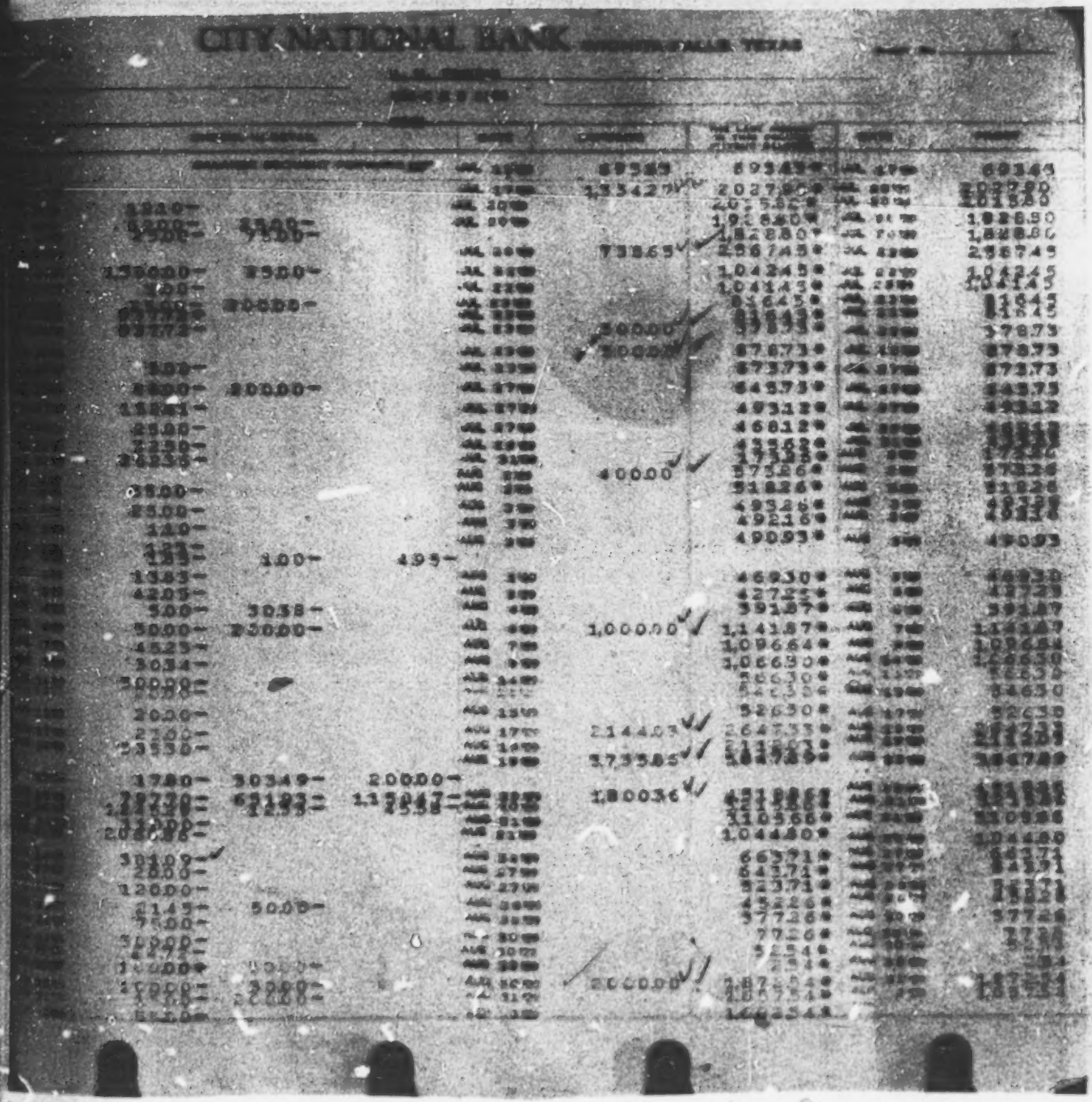


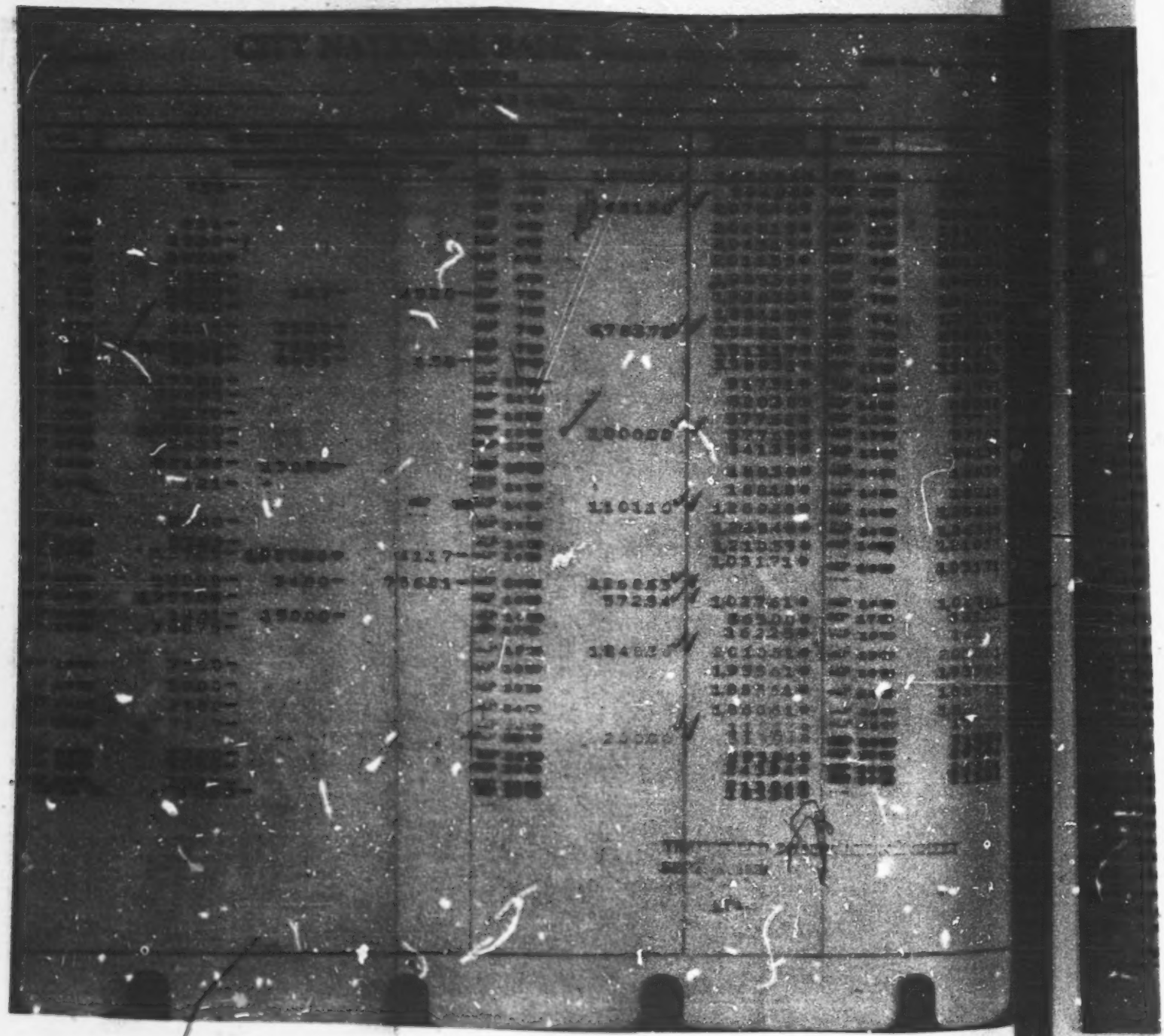

CITY NATIONAL BANK

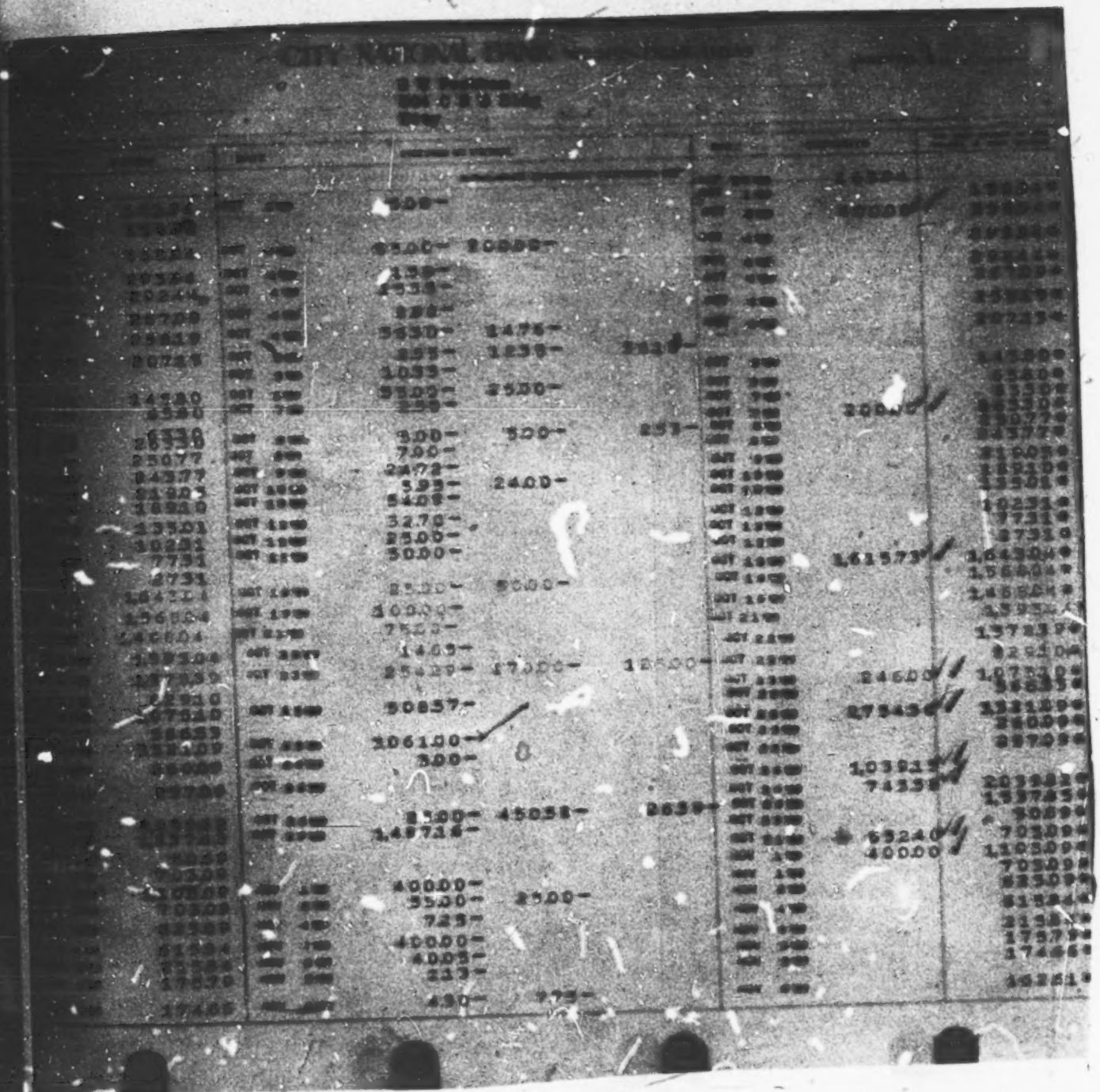


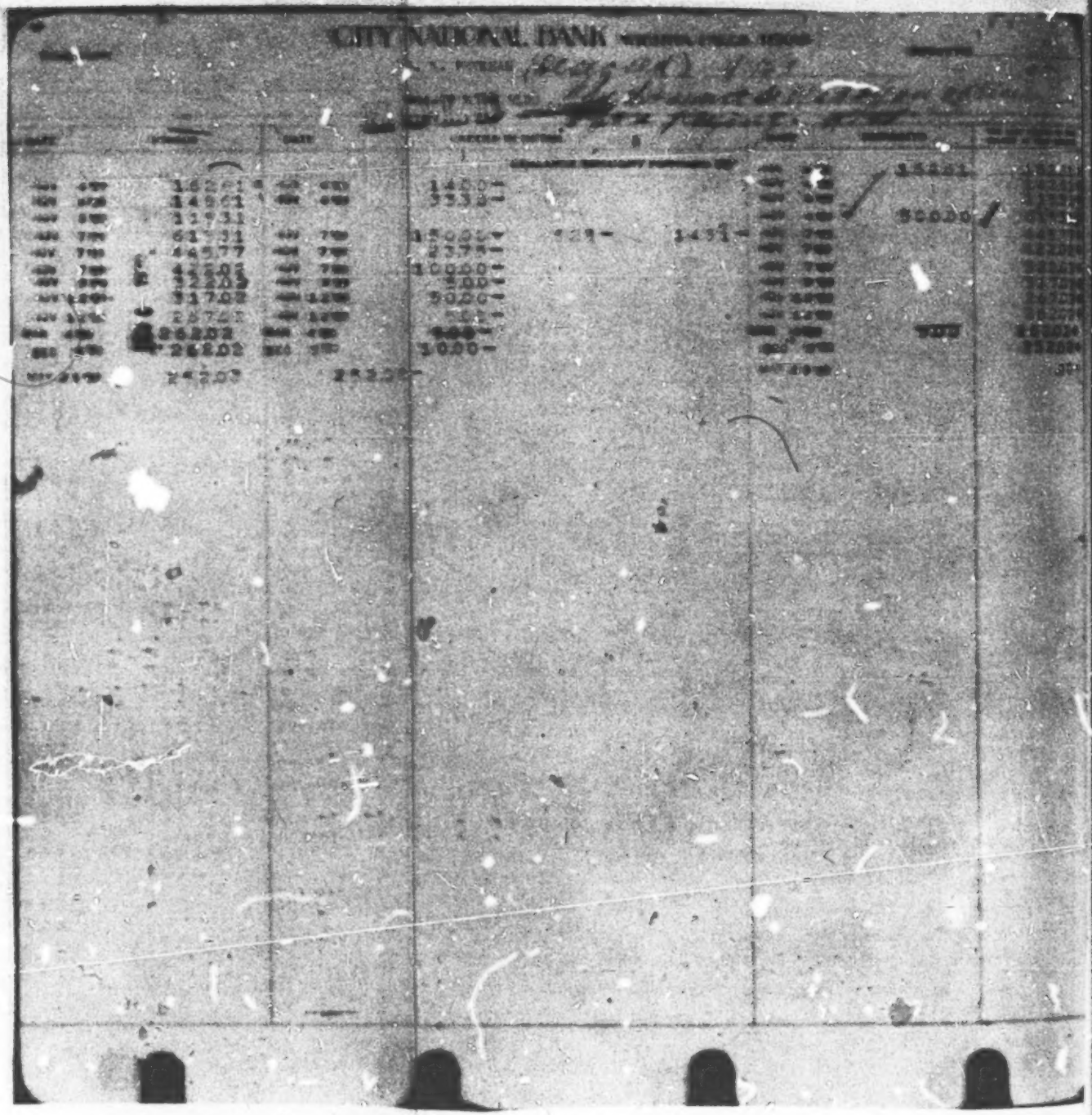

CITY NATIONAL BANK


CITY NATIONAL BANK


CITY NATIONAL BANK
DALLAS, TEXAS






CITY NATIONAL BANK

684 The Witness:

I have a sheet before me that I have worked up from the original records of the bank whereby it will be reflected the transactions had with reference to additional cash placed in the plaintiff bank. I worked these up from the general books of the City National Bank, that is, from the general ledger, which shows all transactions, the general ledger reflects all totals of the entire operation of the bank from every department; those totals are built up with many separate items. We borrowed some money on October 10, $150,000.00 from the First National Bank of Wichita Falls; borrowed $100,000.00 from the First National Bank in Dallas, for which the bank executed its notes payable for those two items. The notes have been paid, but I do not have them, I am sure they are in the files of the bank, here are part of them. I do not have the first note. I have one note dated October 9, $50,000.00, there was two more of them, but I do not have the first one. I have the renewal of them on January 7. On October 9, 1931, they executed three notes in the amount of $50,000.00 each, when I say "they" I mean the City National Bank of Wichita Falls, due in ninety days, payable to the First National Bank of Wichita Falls, Texas. These notes were indorsed by J. T. Harrell, R. O. Harvey, C. W. Snider, W. L. Robertson, L. H. Cullum, F. T. Timberlake, J. J. Perkins, Frank Kell, N. H. Martin, J. Anderson Kemp, C. E. Basham, Oral Jones, the Langford Investment Company trustee, and P. P. Langford, President. Those notes were renewed on January 7, for ninety days, the notes were signed, the

685 City National Bank of Wichita Falls, by J. T. Harrell, President. They were indorsed Orville Bullington, A. H. Britain, and Leslie Humphrey. I will read all of the indorsements. J. T. Harrell, W. L. Robertson, C. E. Basham, Oral Jones, L. H. Cullum, Frank Kell, R. O. Harvey, N. H. Martin, F. T. Timberlake, J. J. Perkins, Orville Bullington, J. L. McMahon, Langford Investment Company, trustee, for P. P. Langford's children by P. P. Langford, President, C. W. Snider, A. H. Britain,

C. H. Clark, J. Anderson Kemp, and Leslie Humphrey. The notes were renewed on April 6 for $125,000.00, that was 1932. One note for $25,000.00 and one note for $100,000.00. The notes were renewed July 5 for $125,000.00, one for $25,000.00 and one for $100,000.00. They were again renewed on September 3, 1932, for $125,000.00, and again renewed November 2, for $110,000.00; January 31, 1933, renewed for $100,000.00; again renewed May 15, 1932, by City National Bank of Wichita Falls. I do not have the canceled voucher which paid it, I will get that for you. I can not tell you when the notes were executed to the First National Bank in Dallas, but I will get that for you in the morning.

The $100,000.00 loan by the Dallas Bank was evidenced by note of the City National Bank of Wichita Falls, and was indorsed or guaranteed. That obligation was paid, on March 14, 1932, they owed the First National Bank in Dallas, $55,000.00, and I don't recall without looking at the contract whether it was assumed by the new bank or not. On October 13, 1931, the City National
686 Bank of Wichita Falls borrowed $460,000.00 from the Federal Reserve Bank in Dallas—I do not have the original of those notes, that was up and down at various dates, and on March 14, 1933, they owed $386,500.00.

Mr. Rogers:

We offer in evidence the contract between the old and the new bank.

(Marked "Defendant's Exhibit No. 21" as follows:)

687 DEFENDANT'S EXHIBIT 21.

Minutes of the Meeting of the Board of Directors of the City National Bank of Wichita Falls, Held March 15, 1933.

A meeting of the Board of Directors of The City National Bank of Wichita Falls convened on the above date, with the following members present:

Cullum, L. H.
Harrell, J. T.
Humphrey, Leslie
Jeffus, Jack
Jones, Oral
Kell, Frank
Kell, Joe
Perkins, J. J.
Snider, C. W.
Timberlake, F. P.

The meeting was called to order by Frank Kell, Chairman of the Board.

It was stated that in pursuance of the authority given the officers of the Association on March 15, that the Association, acting through its officers, had entered
688 into a contract with the officers of the "City National Bank in Wichita Falls," that said contract which had been entered into was as follows:

"The State of Texas,
County of Wichita.

Whereas, heretofore, on this day, to-wit, the 15th day of March, A. D. 1933, the Board of Directors of The City National Bank of Wichita Falls, at a meeting of said Board, duly and legally called, adopted a resolution which authorized the officers of said Association to commence proceedings for the voluntary liquidation of said

Association, under the provisions of the Revised Statutes of the United States, providing for voluntary liquidation of National Banking Associations and said resolutions also provided for the sale and transfer of certain assets of the said The City National Bank of Wichita Falls, including cash on hand, to the "City National Bank in Wichita Falls," located at Wichita Falls, Texas, in order to fully protect and secure the said "City National Bank in Wichita Falls" for all monies advanced and to be advanced by the said "City National Bank in Wichita Falls" in the assumption and payment of certain liabilities of the said City National Bank of Wichita Falls, as hereinafter provided, and

"Whereas, the resolution of the Board of Directors further authorized and directed the officers of the said The City National Bank of Wichita Falls to make and execute such contracts with the "City National Bank in Wichita Falls" as might be necessary and appropriate, in order to carry out the general purpose of the resolution adopted by the Board of Directors of the said The City National Bank of Wichita Falls, reference to which resolution, found on the minutes of said Association, is here made, and

689

"Whereas, the Board of Directors of the "City National Bank in Wichita Falls," at a meeting of said Board, duly and legally adopted a resolution, whereby the said "City National Bank in Wichita Falls" assumed the payment of the depositors' liabilities, and certain other liabilities of the said The City National Bank of Wichita Falls, as hereinafter provided, upon condition that assets of The City National Bank of Wichita Falls should be sold, transferred, assigned, indorsed and delivered unto the said "City National Bank in Wichita Falls," sufficient in amount and value to fully protect and adequately secure against loss the said "City National Bank in Wichita Falls" for any and all amounts as to which payment is assumed under said resolution adopted by the Board of

Directors of the said "City National Bank in Wichita Falls, and

Whereas, said Board of Directors of the "City National Bank in Wichita Falls" authorized the officers of said Association to make such contract as might be necessary to carry out the provisions of such resolution, the details of which were to be left to the discretion of said officers.

"Now, Therefore, these "Articles of Agreement" entered into, by and between the said "The City National Bank of Wichita Falls," hereinafter called First
690 Party, and the said "City National Bank in Wichita Falls," hereinafter called Second Party.

Witnesseth:

(1) The First Party has sold, transferred, assigned and indorsed, and does by these presents hereby sell, transfer, assign and indorse unto the Second Party, its successors and assigns, the bills receivable and other negotiable instruments, cash items, choses in action, bonds, warrants and other assets, as shown by Exhibit "A" attached hereto and made a part of this contract, and the said First Party has also transferred, assigned and delivered unto the said Second Party all its cash now on hand, the total face value of the assets sold, transferred, assigned, indorsed and delivered unto the said Second Party being in the aggregate sum of Three Million Four Hundred Fifty-five Thousand Six Hundred Thirteen and 43/100 ($3,455,613.43) Dollars.

"To Have and to Hold the same unto the said Second Party, its successors and assigns, vendees and indorsees, and the said First Party agrees, for itself and its successors, to warrant and forever defend unto the said Second Party, its successors and assigns, indorsees and vendees,

the title to all the assets this day sold, transferred, assigned, indorsed and delivered unto the said Second Party, against any and all persons whomsoever claiming or to claim the same or any part thereof.

(2) First Party also agrees to and with Second Party that Second Party may renew and extend the
691 date of payment of any bills receivable or other negotiable instruments this day sold, transferred and assigned to it from time to time, without notice to the said First Party, or its successors, and in order to fix the liability of the First Party upon its indorsement absolutely and unconditionally, the said First Party agrees, for itself and its successors, that as indorser it waives presentment for payment, protest and notice of protest, and non-payment of any of said bills receivable or other negotiable instruments, or any kind or character and agrees and consents that Second Party may renew any of said bills receivable as long as it may desire, and may extend the time of payment of any of said bills receivable, and may alter or change the collateral securing any of said bills receivable in any such manner as the officers of said Second Party may, in their discretion deem best, all without in any manner releasing or impairing the liability of the said First Party as an indorser upon said bills receivable or other negotiable instruments.

The First Party likewise agrees with the Second Party that it may sell, transfer, assign, indorse or deliver any of said bills receivable or other negotiable instruments, or any other of the assets this day purchased, to any other purchaser or purchasers, and that the purchaser or purchasers or indorsers, vendees or transferees of Second Party shall have all the rights extended by the First Party to Second Party under this contract.

(3) The First Party also agrees with Second Party that if Second Party shall at any time conclude
692 that any of the bills receivable or other negotiable instruments, or renewals thereof so in-

dorsed to it by First Party, are not worth their face value, that is the amount of the principal shown to be due on said bills receivable or other negotiable instruments, then and in that event the said First Party will upon demand being made upon it or its successors by the said Second Party immediately take up and pay off all of such doubtful bills receivable or other negotiable instruments, or renewals thereof, in cash, in which event the Second Party will transfer such doubtful bills receivable or other negotiable instruments to the First Party without recourse, or if acceptable to the Second Party, the First Party may substitute other bills receivable or other negotiable instruments or assets, or the promissory note of First Party in an amount sufficient to discharge and take up the bills receivable or other negotiable instruments which the Second Party may not believe collectable and worth their face value, and upon which Second Party may have demanded payment or substitution, and in the event First Party refuses or fails, upon the demand of Second Party, to pay cash or substitute other acceptable assets for such bills receivable or other negotiable instruments which Second Party may think doubtful and not worth their face value, then and in that event, it is agreed that the aggregate amount of said bills receivable or other negotiable instruments concerning which the said Second Party may be in doubt as to the value
693 thereof, shall constitute a binding and valid obligation against First Party, its successors and assigns, due and payable upon demand, and suit may be brought against the said First Party for the aggregate amount of any of such bills receivable or other negotiable instruments, or either of them, and ten per cent additional of the amount of the principal of any or all of such bills receivable or other negotiable instruments shall be added thereto as attorneys' fees, and this right and privilege shall inure to the benefit of any holder or holders of any of such bills receivable or other negotiable instruments indorsed by First Party to Second Party, and such holder or holders of any of such bills receivable or

other negotiable instruments shall in like manner become the creditor of First Party by reason of becoming the owner or holder of any of said bills receivable or other negotiable instruments which have been unconditionally indorsed by the said First Party as herein provided.

It is also agreed that Second Party may at its option allow First Party to substitute other bills receivable or negotiable instruments, or its promissory note or notes in lieu of those it is called upon to redeem because doubtful, and as to any such bills receivable or other negotiable instruments substituted in lieu of those of doubtful value, the said First Party agrees that the provisions of this section of this contract shall apply to said substituted bills receivable or other negotiable instruments in the same manner as is herein provided as to the bills re-
694 ceivable and other negotiable instruments this day sold, transferred, delivered and indorsed to the said Second Party, and this obligation shall likewise be valid and binding upon the said First Party, its successors and assigns.

(4) To further secure Second Party in its assumption of the liabilities of the First Party to its depositors and certain other creditors herein mentioned, it is agreed that all of the remaining assets of First Party not this day transferred to Second Party, shall be pledged to J. T. Harrell, Trustee, and that the funds derived from the sale of such assets or any of them, or the collection of any of such obligations, shall constitute a trust fund which shall be kept intact, and on deposit in some solvent bank, for the purpose of securing Second Party upon the indorsement which has this day been made, or which may hereafter be made upon said bills receivable or other negotiable instruments purchased from First Party and for the purpose of redeeming any assets which may become doubtful, this additional security being hereby given and pledged to Second Party for the purpose of

absolutely securing and making good the indorsement of the First Party upon its said bills receivable and other negotiable instruments, sold, transferred, assigned and indorsed to Second Party.

(5) The First Party, until final liquidation of its affairs, and final settlement with its shareholders, agrees to maintain its corporate existence and agrees that its officers and directors will at all times, when
695 called upon to do so by Second Party, execute and deliver in the name of First Party all other and further instruments of writing of any kind or character which the officers of Second Party may deem necessary to fully effectuate the transfer of the assets this day delivered.

(6) In consideration of the covenants and agreements herein made by First Party, it is hereby agreed by Second Party that it will assume, and that it does by these presents hereby assume and promise to pay when and as the same are presented for payment, all of the depositors of First Party, as shown by the books of First Party at the close of business on March 14, A. D. 1933, said deposits being in the aggregate of Three Million Two Hundred Eighty-Six Thousand Seven Hundred Seven and 46/100 ($3,286,707.46) Dollars, and no more, and it also assumes and agrees to pay certain other liabilities of said First Party, amounting to Five Hundred Sixty-Six Thousand Five Hundred and no/100 ($566,500.00) Dollars, as shown by a list of such liabilities, attached hereto and marked Exhibit "B" and made a part hereof, and no more.

(7) It is distinctly understood and agreed between the parties hereto, that neither the resolutions of the Board of Directors of the respective parties hereto, nor this contract, nor any other act or agreement had or made between the parties hereto, shall in any manner be so construed as to relieve the shareholders of First Party

from their legal liability as shareholders to re-
696 spond, in the event it may be necessary to have recourse upon such shareholders' liability for any deficit which may exist in the value of the bills receivable or other negotiable instruments this day sold, transferred and unconditionally guaranteed by First Party to Second Party, it being the intention of the parties hereto that should Second Party decide that the bills receivable or other negotiable instruments or other assets this day sold, transferred and assigned by First Party, are insufficient to pay the liabilities of First Party which have been paid and which have been assumed by Second Party, then and in that event the Second Party, its successors and assigns, shall have recourse against the shareholders of First Party, as provided by Section 64, Title 12, United States Code Annotated, and other provisions of said Title 12, for any deficiency and for full and complete enforcement of this contract, according to its terms, the intention being to absolutely bind the First Party by unconditional indorsement and unconditional warranty, as hereinabove set forth, for the payment of the face value and interest due upon all the bills receivable and other negotiable instruments this day sold, assigned, transferred and delivered to Second Party, and in case the face value of, that is the principal of any of said bills receivable, are not collected by the said Second Party or any holder or holders thereof, together with all interest due or to become due thereon, according to the face, tenor and effect thereof, or in case said bills receivable
697 or other negotiable instruments, bonds, warrants, cash items and choses in action are at any time deemed uncollectable or doubtful by the said Second Party, or any holder thereof, and First Party fails to take up said bills receivable in cash or to substitute other acceptable assets to the satisfaction of Second Party, then and in that event, the Second Party, its successors, assigns and indorsers, shall have a valid and binding obligation against the said First Party for the principal, interest and attorneys' fees due on said bills receivable and other

negotiable instruments, according to the face, tenor and effect thereof, and may proceed against First Party, or its shareholders to enforce the same, and no lack of diligence on the part of the Second Party, or any of its indorsees, shall constitute any defense to such cause of action, provided that no demand shall be made by Second Party against First Party, and its shareholders, after three years from the date hereof, during which time the guarantee herein and hereby made by First Party to Second Party shall remain in full force and effect.

(8) It is also agreed between the parties hereto, that inasmuch as some of the bills receivable and other negotiable instruments which First Party has this day sold, transferred and assigned to Second Party, have already been pledged to secure other bills payable of First Party, that as to such bills receivable or other negotiable instruments which First Party is unable upon this date to make delivery to Second Party, Second Party may at
698 its option require First Party to execute and deliver to Second Party the promissory note of First Party for the face value of all those bills receivable or other negotiable instruments which First Party has sold to Second Party, and is unable to deliver to Second Party upon this date.

(9) It is also understood and agreed between the parties hereto that as to First Party, this guarantee shall be a continuing guarantee, and apply to and be binding upon First Party, its successors and assigns, as to any renewals of notes sold, transferred and delivered by First Party to Second Party during the existence of this agreement, and it also agreed that Second Party may grant time or other indulgence to the makers of the bills receivable and other negotiable instruments sold, transferred, delivered and indorsed by First Party to Second Party, and may also make and grant extension and renewals from time to time to the makers of said bills receivable and other negotiable instruments, all without affecting or in any way

impairing the validity of this agreement, or the liability of First Party herein.

Second Party may also change the collateral on any of the bills receivable and other negotiable instruments, bonds, warrants, cash items and choses in action, or may make such releases or exchanges of collateral as may to the Second Party and its officers seem best, to effectuate the final collection of the bills receivable and other negotiable instruments, bonds, warrants, cash items
699 and choses in action so indorsed and guaranteed by First Party herein, and this without in any manner affecting or in any way impairing the validity of either the guarantee or indorsement made by First Party to Second Party herein.

"In Witness Whereof, the parties hereto have caused these presents to be signed and delivered in duplicate, each an original, by their proper corporate officers, and have caused their proper corporate seals to be hereto affixed, this the 15th day of March, A. D., 1933. Erasures and interlineations made and approved before signing.

THE CITY NATIONAL BANK OF WICHITA FALLS,
By J. T. HARRELL,
President, First Party.

Attest:
ORAL JONES,
Cashier.

CITY NATIONAL BANK IN WICHITA FALLS,
By J. T. HARRELL,
President, Second Party.

Attest:
JACK JEFFUS,
Cashier.

EXHIBIT "A."

List of Bills Receivable and other Negotiable Instruments, Cash Items, Choses in Action, Bonds, Warrants and other assets this day sold, transferred, assigned, indorsed and delivered to City National Bank in Wichita Falls by The City National Bank of Wichita Falls,
700 as per contract executed on March 15, 1933, to which this list is hereby attached and made a part of:

Cash, Cash Items and due from banks	$ 191,286.24
United States Bonds and Securities	1,064,000.00
Other Stocks and Bonds (County Warrants)	65,085.93
Loans and Discounts	2,532,835.29
Total	$3,853,207.46

EXHIBIT "B."

List of certain other liabilities besides deposits, totaling $3,286,707.46, as shown by books of The City National Bank of Wichita Falls at the close of business on March 14, 1933, which liabilities are assumed by City National Bank in Wichita Falls, as per contract executed March 15, 1933, to which this exhibit is attached and made a part of.

Bills Payable.

First National Bank, Wichita Falls, Texas	$124,000.00
First National Bank in Dallas, Dallas, Texas	55,000.00
Federal Reserve Bank of Dallas, Dallas, Texas	386,500.00
Total	$566,500.00

The Chairman stated that in addition to the powers given the officers by the resolution passed by the Board

of Directors of this Association also desired that the Directors ratify and confirm the contract as executed between the two Associations, to-wit, "The City
701 National Bank of Wichita Falls," and the said "City National Bank in Wichita Falls,"

Whereupon, the following resolution was offered by C. W. Snider and seconded by L. H. Cullum, to-wit:

"Be It Resolved by the Board of Directors of this Association that the Board ratify and confirm in all things the action of the officers of this Association in executing the contract between this Association and the "City National Bank in Wichita Falls," dated March 15, 1933, and,

"Be It Further Resolved, that a copy of the contract executed between the two Associations be spread upon the minutes of this Association."

Whereupon, the resolution was submitted to a vote of the Directors, and was unanimously adopted.

Upon motion duly made and seconded, the meeting was adjourned.

(S) W. L. ROBERTSON,
Vice President.
(S) JACK JEFFUS,
Ass't Secretary.

702 The Wtiness:

I have now the original minute book of the City National Bank of Wichita Falls, meetings of the stockholders, June 30, 1933. This is the first meeting that the stockholders had.

Mr. Rogers:

I offer in evidence the minutes of a call meeting of the stockholders of the City National Bank, held June 30, 1933.

(Marked "Defendant's Exhibit No. 22" and reading as follows:)

DEFENDANT'S EXHIBIT 22.

Minutes of a Called Meeting of the Stockholders of The City National Bank of Wichita Falls held June 30, 1933.

The meeting was called to order by the President.

703 The Judges announced that a majority of stock was represented in person, or by proxy, as follows:

In Person	No. Shares
Abbott, W. S.	20
Basham, C. E.	113
Bassett, L. N.	40
Boyd, Mrs. Sarah E.	70
Britain, A. H.	97
Bullington, Orville	250
Cullum, L. H.	140
Duncan, T. P.	67
Harrell, J. T.	554
Harvey, R. O.	240
Jeffus, Jack M.	12
Jones, Oral	200
Kell, Joe A.	10
Langford Investment Co.	83
Langford Investment Co. Tr., P. P. Langford, Jr., V. Pres.	1,391
McMahon, J. L.	12
Murph, J. W.	100
Patterson, C. A.	50

By Proxy	No. Shares
(Voted by J. R. Chambers)	
Hardy, Mrs. D. M.	33
(Voted by C. B. Woods)	
Inland Investment Co.	46
(Voted by Rosco Staton)	
Mrs. C. B. Staton	60
Mrs. Rosco Staton	20
(Voted by Orville Bullington)	
R. E. Basham	5
Ray F. Bowmer	10
Farris, I. A.	8
Foster, F. A.	3
Humphrey, Leslie	290
Kell, Frank	1,174
Kemp Estate (J. A.)	908
Lasker, Loula	367

626

Perkins, J. J.	527	Martin, N. H.	139
Robertson, W. L.	448	Snider, C. W.	375
Sartwell, Inv. Corp. Tr., J. L. McMahon, Pres.	188	Stewart, L. G.	10
Timberlake, F. P.	110		
Vogtsberger, Wm.	26		
Ward, J. C.	30		
Womack, O. B.	50		
Young, J. T.	11		
Total	4,839	Total	3,448
(Proxy)	3,448		
	8,287	Total Shares Represented.	

The President made a report regarding the purchase of various assets by City National Bank in Wichita Falls of the City National Bank of Wichita Falls, and the assumption of deposit liability by that association, and after some discussion the following resolution, upon motion by Orville Bullington, seconded by J. L. McMahon, was passed unanimously:

"Resolved, That The City National Bank of Wichita Falls be placed in voluntary liquidation under the provisions of Sections 5220 and 5221 of the United States Revised Statutes, to take effect July 1, 1933, and that C. E. Basham be appointed liquidating agent or liquidation committee of said bank; that liquidation shall be conducted in accordance with law and under the supervision of the board of directors, who shall require a suitable bond to be given by the said agent or committee in an amount to be fixed by the board of directors; that the said liquidating agent or committee shall render
705 annual reports to the Comptroller of the Currency on the 31st of December each year showing the progress of said liquidation until said liquidation is completed; that said liquidating agent or committee shall render an annual report to the shareholders on the date fixed in the articles of association for said annual meeting, at which meeting the shareholders may, if they see fit, by a vote representing a majority of the entire stock of the bank, remove the liquidating agent or committee and appoint another in place thereof; that a special meeting of the shareholders may be called at any time in the same manner as if the bank continued an active bank, and at said meeting of the shareholders may, by a vote of the majority of the stock remove the liquidating agent or committee; that the Comptroller of the Currency is authorized to have an examination made at any time into the affairs of the liquidating bank until the claims of all creditors have been satisfied, and that the national bank examiner will be compensated for his time and expense in making the examination in question."

The President conducted a discussion of the contract entered into between The City National Bank of Wichita Falls, and City National Bank in Wichita Falls, as it appears on pages 140 to 148, inclusive, of the minute book of The City National Bank of Wichita Falls, and upon motion by G. B. Woods, seconded by J. W. Murph, action of the directors entering into the contract was approved unanimously.

706 There being no further business, upon motion by Mr. Perkins, seconded by Mr. Timberlake, the meeting was adjourned.

(S) W. L. ROBERTSON,
Vice President.
(S) JACK JEFFUS,
Ass't Secretary.

Minutes of the Meeting of the Board of Directors of The City National Bank of Wichita Falls held June 30, 1933.

A meeting of the Board of Directors of The City National Bank of Wichita Falls convened on the above date directly after adjournment by the stockholders, with the following present:

Basham, C. E.
Cullum, L. H.
Harrell, J. T.
Harvey, R. O.
Jeffus, Jack
Jones, Oral
Kell, Joe
McMahon, J. L.
707 Perkins, J. J.
Robertson, W. L.
Timberlake, F. P.

Upon motion by Mr. Timberlake, seconded by Mr. Cullum, the following resolution was passed unanimously:

"Whereas, after due and legal notice, the stockholders of this association owning two-thirds of capital stock have voted to place the association in voluntary liquidation, and

"Whereas, this vote has been duly certified to the Comptroller of the Currency, and

"Whereas, under the provisions of section 5 of the act approved December 23, 1913, and known as the Federal Reserve Act, this association is required to surrender for cancellation all of its holdings of the capital stock of the Federal Reserve Bank of Dallas, and to terminate its membership in said bank,

"Now, Therefore, Be It Resolved, that—C. E. Basham—the duly elected Liquidating Agent, be, and he is hereby authorized, empowered, and directed to apply to the said Federal Reserve Bank for the cancellation of 600 shares of stock alloted to and held by this association, and to receive and receipt for any balance due this association by said Federal Reserve Bank on account of cash and paid subscriptions, or otherwise, and any securities or other valuables belonging to this association, and to
708 do such acts as may be necessary to adjust and settle the accounts between this association and the said Federal Reserve Bank."

There being no further business to appear, the meeting adjourned.

(S.) J. T. HARRELL,
(S.) JACK JEFFUS.

Mr. Humphrey:

In that connection, I offer in evidence the minutes of the Board of Directors, of March 25, 1933, page 149, of the

Minute Book, wherein C. E. Basham, was appointed by the directors as liquidating agent.

(Said instrument marked "Plaintiff's Exhibit No. 46" and reading as follows:)

PLAINTIFF'S EXHIBIT 46.

Minutes of the Meeting of the Board of Directors of The City National Bank of Wichita Falls held March 25, 1933.

A meeting of the Board of Directors convened on the above date, with the following members present:

Cullum, L. H.
Harrell, J. T.
709 Humphrey, Leslie
Jeffus, Jack
Jones, Oral
Kell, Frank
Kell, Joe
Perkins, J. J.
Snider, C. W.

Upon motion by Mr. Harrell, seconded by Mr. Humphrey, and carried, the following committee:

Cullum, L. H.
Kell, Joe
Snider, C. W.
Timberlake, F. P.

was designated to inaugurate proceedings for the voluntary liquidation of the affairs of The City National

Bank of Wichita Falls, and that C. E. Basham be appointed Liquidating Agent.

Motion was duly made and seconded that the meeting be adjourned.

(S.) J. T. HARRELL,
President.
(S.) JACK JEFFUS,
Ass't Secretary.

The Witness:

There had been some action by the Board of Directors prior to March 25, at the time that resolution was adopted with respect to the liquidation of the bank. The date of that is March 15.

710 Mr. Rogers:

We offer in evidence the minutes of the meeting.

(Marked "Defendant's Exhibit 23" and reading as follows:)

DEFENDANT'S EXHIBIT 23.

Minutes of the Meeting of the Board of Directors of The City National Bank of Wichita Falls held March 15, 1933.

At a special meeting of the Board of Directors of The City National Bank of Wichita Falls, Texas, held March 15, A. D. 1933, there were present the following directors:

Cullum, L. H.
Harrell, J. T.
Humphrey, Leslie
Jeffus, Jack
Jones, Oral

711 Kell, Frank
Kell, Joe
Perkins, J. J.
Snider, C. W.

The following proceedings were had, to-wit:

The President, J. T. Harrell, after submitting the report of the recent examination, explained to the Board that the capital stock of The City National Bank of Wichita Falls had become seriously impaired and that it was doubtful whether or not the Secretary of the Treasury and the Comptroller of the Currency would give their consent to the reopening of the bank for business at 9:00 o'clock, A. M., March 15, 1933. The President said that he thought it would be absolutely essential to the welfare of the depositors that the deposit liability of the bank be taken care of in some way, so that the depositors would be absolutely protected and that there would be no lessening of confidence in the banks of Wichita Falls. The President further stated that it was absolutely impracticable to pursue the remedy of assessing stockholders of the bank in order to make good the impairment, and that confidence would be seriously impaired, if not destroyed, if the bank failed to reopen for business at 9:00 o'clock A. M., on the morning of March 15th, 1933. The President stated that—in his opinion—there was only one thing that could be done, and that would be to get some other bank to assume the deposit liabilities, and such other liabilities as said bank could be induced to assume, and that he thought it would be necessary
712 for the bank to do this, and that it would also be necessary for The City National Bank of Wichita Falls to go into voluntary liquidation. The President stated that at the suggestion of the Chief Bank Examiner, Mr. Collier, and his assistant for this district, Mr. Gilbert, that certain of the shareholders of The City National Bank of Wichita Falls had made application to the comptroller of the Currency, as provided by law, for the or-

ganization of a new National Bank in Wichita Falls, Texas, to be known as "City National Bank in Wichita Falls." The President stated that the Comptroller had given his assent to the organization of the new bank, and that it was authorized to open for business at 9:00 o'clock A. M., on March 15, 1933; that its capital stock had been fully paid in in the sum of Four Hundred Thousand ($400,000.00) Dollars and that the directors had stated that if a satisfactory contract could be agreed upon that the new bank would assume the depositors' liability and certain other liabilities of "The City National Bank of Wichita Falls."

Whereupon, upon motion being duly made by Leslie Humphrey, and seconded by L. H. Cullum, the following resolution was unanimously adopted, to-wit:

"Be It Resolved by the Board of Directors of "The City National Bank of Wichita Falls" that this Association as early as practicable commence proceedings for the voluntary liquidation of this association, under the provisions of the Revised Statutes of the United States providing for the voluntary liquidation of National Banking Associations.

713

"Be It Also Resolved that the officers of this Association be vested with full and complete authority to execute a contract providing for the sale and transfer of a sufficient amount of the assets of this Association, including cash on hand, necessary to induce the "City National Bank in Wichita Falls", a National Banking Association, authorized to do business in the City of Wichita Falls, Texas, to assume the liabilities due to the depositors of The City National Bank of Wichita Falls, and such other and further liabilities of this Association as the said "City National Bank in Wichita Falls" can be induced to assume.

"Be It Further Resolved that the officers of this Association are authorized and empowered to pledge all of the assets of this Association, if, in their discretion, they think best, for the purpose of inducing the said "City National Bank in Wichita Falls" to assume the liabilities above mentioned, of this Association.

"Be It Further Resolved that the officers of this Association are authorized and empowered to make such guarantees and warranties as to the value of the assets of this Association as they may find necessary and proper, and as they may in their discretion think best, they being authorized and empowered to bind this Association and its shareholders in any manner, which, in their discretion, they may think best in order to induce the
714 said "City National Bank in Wichita Falls" to assume the liabilities of this Association to its depositors, and such other liabilities as the officers of this Association can induce the said "City National Bank in Wichita Falls" to assume, it being our purpose and intent to grant unto the officers of this Association full power and authority to make such contract for this Association with the said "City National Bank in Wichita Falls" as the officers of this Association may think best and proper, in order to effectuate the purposes in mind, to-wit, the full protection of the depositors of this Association from any loss whatever."

"Upon motion duly made and seconded, the meeting was adjourned.

(S.) J. T. HARRELL,
President.
(S.) JACK JEFFUS,
Ass't Secretary.

The Witness:
I don't think there are any other actions shown by the minutes of the Board of Directors, with respect to the liquidation of the old bank, other than those that have been offered in evidence.

Mr. Deaton is now the liquidating agent of the plaintiff bank, being appointed after Mr. Basham resigned. Mr. J. T. Harrell is still the trustee named in the contract.

As to the moneys that were borrowed, and the cash in the old bank thereby increased, I will start with April 8, 1931, and give a history of the thing, on that day, for
$150,000.00 from the Forth Worth National Bank
715 of Fort Worth. These are all evidenced by notes executed by that bank as principal. On May 7, 1931, borrowed $150,000.00 from the Guaranty Trust Company of New York. That made a total of bills payable, $300,000.00. On June 22, 1931 paid the Fort Worth National Bank $50,000.00. That cut the bills payable down to $250,000.00. On June 25, 1931, reduced the note of the Guaranty Trust Company to $124,364.20, making a total bills payable of $224,364.20. On June 29, 1931, paid those obligations off. They did not owe any bills payable. On July 25, 1931, borrowed $100,000.00 from the Guaranty Trust Company. On July 31, 1931, borrowed $175,000.00 from the National City Bank of New York, and approximately the same day they paid this $100,000.00 to the Guaranty Trust Company; that left the bills payable owing $175,000.00. On August 31, 1931, borrowed $30,000.00 from the Fort Worth National Bank, making a total bills payable $205,000.00. On September 14, 1931, reduced the bills payable to the National City Bank, to $154,006.00, and borrowed $200,000.00 from the First National Bank of St. Louis, Missouri, making a grand total of bills payable at this time, $384,006.00. On October 10, 1931, reduced the bills payable at the Fort Worth National Bank to $20,000.00 reducing the bills payable at the National City Bank New York $118,076.03. Reduced bills payable First National Bank of St. Louis, Missouri, to $142,916.71. Borrowed $150,000.00 from the First National Bank of Wichita Falls, and borrowed $100,000.00 from the First National Bank in Dallas, making a grand total
716 of bills payable $530,992.74. On October 13, 1931, borrowed $460,000.00 from the Federal Reserve

Bank, making a grand total of bills payable, $990,992.74. On or about October 16, 1931, they paid the Fort Worth National Bank's note off. They reduced the National City Bank of New York to $117,843.68. Reduced First National Bank of St. Louis, Missouri to $129,890.04, and the Federal Reserve Bank of Dallas note had been reduced to $465,028.63, making a grand total of bills payable $952,-762.36. On October 30, 1931, the National City Bank of New York note was reduced to $88,000.00. First National Bank of St. Louis note had been reduced to $120,-906.07. Federal Reserve Bank of Dallas, had been increased to $469,000.00, making a grand total of $927,906.07. On December 31, 1931, the note at the National City Bank of New York had been reduced to $79,221.49. First National Bank of Dallas had been reduced to $108,576.90. First National Bank of Wichita Falls note had been reduced to $60,000.00. Federal Reserve Bank of Dallas had been reduced to $110,000.00, making a grand total of $747,798.39. On March 31, 1932, the note of the National City Bank of New York had been reduced to $45,615.33. First National Bank of St. Louis, Missouri had been reduced to $77,481.16. Federal Reserve Bank of Dallas had been reduced to $396,000.00, making the amount payable $669,096.49. On April 8, 1932, borrowed $327,325.75, from the Reconstruction Finance Corporation, making a grand total of Bills payable, $996,422.24. On April 13, 1932, National City Bank of New York note had been reduced to $20,615.33. First National Bank of St. Louis, Missouri, had been reduced to $55,184.49. First National Bank of Wichita Falls, had been increased to $125,000.00. Federal Reserve Bank at Dallas note had been reduced to $363,500.00. Note to the Reconstruction Finance Corporation had been reduced $325,421.42, making a grand total of $898,721.24. On April 4, 1932, note of the National City Bank of New York, had been reduced to $12,394.00. Note of the First National Bank of St. Louis, Missouri had been reduced to $45,484.49. Note of the Federal Reserve Bank in Dallas, reduced to $260,000.00. Note of Re-

717

construction Finance Corporation of Dallas, Texas, had been increased to $624,990.03, making a total of bills payable of $1,167,868.62. On May 31, 1932, the note of the National City Bank of New York had been paid. Note of the First National Bank of St. Louis, Missouri, had been reduced to $26,668.29. Note of the Federal Reserve Bank at Dallas, reduced to $263,446.67. Note of the Reconstruction Finance Corporation had been reduced to $601,822.99, making a grand total of $1,106,927.95. On October 31, 1932, note of the First National Bank of St. Louis, Missouri, had been reduced to $5,000.62. Note of the First National Bank of this City, reduced to $114,999.12. Note of the First National Bank, Dallas, Texas, reduced to $88,178.83. Note of the Federal Reserve Bank at Dallas, had been reduced to $272,500.00. Note of the Reconstruction Finance Corporation, Dallas, had been reduced
718 to $515,911.22, making a grand total of $996,589.79. In November 19, 1932, note of the First National Bank, Wichita Falls, had been reduced to $110,000.00. Note of the First National Bank of Dallas, had been reduced to $78,000.01. Note of the Federal Reserve Bank, Dallas, had been increased $570,723.06. Reconstruction Finance Corporation's note had been reduced to $493,389.53, making a grand total of $1,257,113.22. On December 31, 1932, note of the First National Bank, St. Louis, Missouri, had been paid off. Note of the First National Bank of Wichita Falls was $100,076.61. Those notes had been reduced to $50,000.00 and had been increased back up to $125,000.00, and these different items that I have testified to were payments on those notes. Note of the First National Bank in Dallas, $55,000.00. Note of the Federal Reserve Bank in Dallas, $516,000.00. Note of the Reconstruction Finance Corporation, $462,116.04, made a total of bills receivable of $1,133,192.65. On February 21, 1933, note of Federal Reserve Bank in Dallas, had been reduced to $367,000.00. Note of the Reconstruction Finance Corporation had been increased to $673,441.48, making a grand total of bills payable of $1,195,441.48. On March 14, 1933, First National Bank, Wichita Falls, $100,-

000.00—that is a renewal of former indebtedness. First National Bank in Dallas, $55,000.00. Federal Reserve Bank in Dallas, $286,500.00. Reconstruction Finance Corporation, $669,641.84, making a grand total of $1,211,-141.84. I have given you a history of the record of the repurchase agreement, which brings the trans-
719 action down to March 15, 1933, the organization of the new bank.

When I used the term "repurchase agreements," I mean that that is the notes of the City National Bank of Wichita Falls, that sold to other banks or individuals as it might be, with a re-purchase agreement, an agreement to repurchase these notes from the parties sold to at a given date.

I will give a history of the transactions classified as repurchase agreements, beginning at the same time and covering the same period.

December 23, 1930, that was a repurchase agreement with the First National Bank in Dallas, $461,679.11. The re-purchase agreement was between the First National Bank of Dallas, and the directors of the City National Bank of Wichita Falls. I have it here.

Mr. Rogers:

We offer the instrument in evidence.

(Marked "Defendant's Exhibit 24" as follows:)

DEFENDANT'S EXHIBIT 24.

Wichita Falls, Texas, December 23rd, 1930.

This Agreement between Frank Kell, C. W. Snider, J. J. Perkins, J. T. Harrell, W. L. Robertson, C. E. Basham, parties of the first Part and the First National Bank in Dallas, Texas, Party of the second part.

Witnesseth:

That the Parties of the First Part have this day sold and do hereby sell and deliver to the Party of the Second Part for the consideration of $461,679.11, the following described County and School warrants and Cotton-Secured acceptances, to-wit:

Wichita County School warrants	$ 38,174.05
Wichita County Warrants	45,304.43
City of Wichita Falls, Warrants	24,999.67
Wichita Falls Independent School Warrant...	203,300.90

720 R. O. Harvey & Co. Inc. Trade Acceptances secured by 3579 bales cotton. Warehouse receipts for cotton held by Hutchings-Sealy National Bank, Galveston, Texas.

Parties of the First Part hereby agree to re-purchase on or before thirty (30) Days from this date and the Party of the Second Part agrees to sell all of the above described County and School warrants and Acceptances for the consideration of the said $461,679.11 together with interest at the rate of five (5) percent on said amount from this date until the date of repurchase.

Parties of the First Part:

JACK KELL,
C. W. SNIDER,
N. H. MARTIN,
J. T. HARRELL,
J. J. PERKINS,
C. E. BASHAM.

(The word Canceled is run through all these signatures).

Party of the Second Part:

FIRST NATIONAL BANK IN DALLAS, Dallas, Texas.
By NATHAN ADAMS,
President.

(On the Reverse Side thereof): Jan. 5, 1931, Repurchased City of Wichita Falls Warrants 24999.67.

Accured interest on Wichita Falls Warrants Pd. (41.67).

Jan. 23, 1931, Repurchased Wichita County Warrants 9291.94.

Interest to 1/23/31 on County Warrants repurchased Pd. (40.00).

721 Jan. 23, 1931, All interest paid to this date.

Jan. 27, 1931, Repurchased Clara Ind. School Dist. War. 1575.67*.

Jan. 27, 1931, Int. paid to date on repurchase War. 88c.

*Posted in new agreement.

NJ.

The Witness:

The amount of money obtained there went direct to the credit of the bank, that is, City National Bank of Wichita Falls; the nat various times, on this repurchase agreement and as those would become due, those warrants would be paid, as those warrants were paid they would pay that amount of money to the First National Bank in Dallas, and they would credit it on this obligation. There were renewals from time to time of these repurchase agreements. I will state what happened. On December 23, 1930, this $461,679.11 worth of warrants, and trade acceptances that the City National Bank of Wichita Falls owed, sold them to the First National Bank in Dallas and got the money on them. That was property of The City National Bank of Wichita Falls, Wichita County warrants, totaling $13,174.05, and the other property described in the contract. That was owned by the City National Bank of Wichita Falls, and they sold these to

the First National Bank in Dallas for this amount of money. The bank did not sign that instrument, these individuals that signed this instrument agreed to repurchase from the First National Bank in Dallas, these items. The balance that was due at a certain date, there was a new agreement signed for the balance then existing
722 on it. And the balance had been paid off before March, 1933. The next re-purchase agreement was with the First National Bank of St. Louis, Missouri, on March 30, 1931, and that was for $300,988.30. That particular item was liquidated somewhere in July, 1931. Then there was a re-purchase agreement on June 17, 1931, with the Fidelity National Bank of Kansas City, Missouri, of $162,466.68, and that was liquidated About December 29, 1931. The next repurchase agreement was with the First National Bank of Wichita Falls—that is wrong, on December 29, 1931, the City National Bank of Wichita Falls sold to various directors of the City National Bank, the individuals, I don't remember right off hand, notes totaling $100,000.00. This group of men borrowed from the First National Bank of Wichita Falls, this $100,000.00 with which to buy these notes, and these notes became due, they were paid by the money that was collected from the proceeds of these notes, was paid to the First National Bank of Wichita Falls, to liquidate the notes. The total outstanding of $27,895.00, March 14, 1933, was paid. I do not know what notes were sold to the directors or individuals by the City National Bank in payment of which such purchasing directors or individuals paid this $100,000.00. I do not have that agreement, or rather, have not located it, and in order to find out, we would have to go through all of the ledger sheets of the liability ledger, both active and closed, which would be a tremendous task. They were notes receivable—I did not handle that transaction. All I can testify to is from the re-
723 cord. I can tell you the total notes receivable as of December 28, 1931; I have here some three or four more repurchase agreements with the First National Bank of Wichita Falls, I have one dated September

23, 1932, for $10,000.81, and I have one dated October 27, 1932, for $4,999.12. Then I have one here dated November 17, 1932, for $9,923.39, which was a renewal of some of these others, and the last one here is dated January 16, 1923, for $6,873.50, which is a renewal of the one dated November 17, 1932. That was finally paid off on February 16, 1933. Under each of these repurchase agreements, last testified to, the assets of the City National Bank of Wichita Falls, belonging to that bank, were delivered to the First National Bank, under the terms of the instruments. The proceeds of those two agreements, and the amounts shown by them, except the renewals, of course, in cash, were deposited to the account of the City National Bank of Wichita Falls.

I have other original instruments between either the directors or stockholders of the City National Bank and the City National Bank of Wichita Falls, or First National Bank of Wichita Falls, concerning this $100,000.00 item which some of the directors of the bank borrowed from the First National Bank and deposited to the account of the City National Bank. I have here a note dated December 29, 1931, due sixty days after date, payable to the order of the First National Bank of Wichita Falls, in the sum of $50,000.00. This note is signed by

724 C. H. Clark, J. T. Harrell, W. L. Robertson, J. Anderson Kemp, C. E. Basham, A. H. Britain, R. O. Harvey, Oral Jones, F. T. Timberlake, Frank Kell, N. H. Martin, Leslie Humphrey, J. J. Perkins, J. L. McMahon, C. W. Snider, L. H. Cullum; I also have another note in the same amount due the same day and signed by the same parties for $100,000.00. These two notes were paid on March 5, 1932. Then I have a note dated April 6, 1932, for $25,000.00 due ninety days after date, payable to the order of First National Bank of Wichita Falls, and this note is signed by Orville Bullington, C. W. Snider, J. Anderson Kemp, C. H. Clark, A. H. Britain, Leslie Humphrey, J. T. Harrell, W. L. Robertson, C. E. Basham, The Langford Investment Company trustee, by P. P. Langford, President, L. H. Cullum, F. T. Timber-

lake, Oral Jones, Frank Kell, R. O. Harvey, N. H. Martin, J. L. McMahon, and J. J. Perkins. This note was renewed on July 5, 1932, for the same amount and the same signor. Renewed again on September 3, 1932, for $25,000.00. On November 2, 1932, for $25,000.00. Renewed again on January 31, 1933, for $25,000.00. That was the amount that was outstanding on it at the time, March 4, 1933, $25,000.00. That note was paid May 15, 1933, I have not determined just how it was paid, it was either paid out of the collection of these notes, or those notes were bought back in by the bank and paid for by the bank, it was not paid with the assets of the bank, because the bank did not own them. These men owned those assets at that time. They had purchased them from the bank and they owned them, that is, the individual directors, to whom they had been delivered, at the time the sixty day note was made. I do not know the terms, and do not have the repurchase agreement on that item.

725

Re-Direct Examination.

By Mr. Humphrey:

I am not a director of the bank, and did not sign any of these notes, and am not familiar with this matter, other than as disclosed by the records; Mr. Harrell is a party to each of them, and he is present and he knows the details.

J. T. HARRELL, recalled, examined in chief by Mr. Rogers, testified as follows:

I will answer the question as asked to Mr. Carson; in this particular item Mr. Carson has been testifying about, with the First National Bank of this city, wherein the directors of the City National Bank and a number of the stockholders, signed an obligation which was originally for $100,000.00 on the date those funds, proceeds of that obligation was received, by the City National Bank, a

like amount of notes was sold to these individuals, who executed this obligation. The note was either liquidated out of the collections of those particular notes, or repurchased from these individuals, of the identical items,
726 by the City National Bank. I do not remember, independently, and do not have available to refresh my memory, just how much of these items were paid as the proceeds of collections of the items sold and/or paid out of other assets of the bank—I do not know what amount was paid, or how much was paid for it.

This whole transaction on these re-purchase agreements, wherein the director signed what was known as the repurchase agreement, was the lending of the credit of the individuals, really, for the benefit of the bank. I might say this, that this term, "repurchase agreement" might not express the fact, but because the contract was not between the two banks, it was an actual sale, so far as the City National Bank was concerned, of these particular assets, and there was no legal obligation on them to repurchase those items. But the individuals who were interested in the bank loaned their credit to strengthen those items, so that the re-purchasing bank would accept them. The bank would have some assets of their own, which with the added security of personal obligation of certain individuals or directors, would enable the obtaining from the Dallas bank of a sum of money. The agreement between the records and the bank is reflected in these agreements, no entries on the bank records at all. When we reduced, for example, the notes receivable of the bank by $100,000.00, at a time when we surrendered those notes receivable to the directors of repurchase agreements, we frequently itemized those items—we
727 would have to refer to the records of this particular item. Our records would not necessarily reflect to whom they were transferred; there would be no written memorandum or book entry, than the reduction of the notes receivable and the increase of the cash on deposit; that is what you will find in all of these items, that the assets went down on one side and

the cash went up on the other. In other words, if anything were to happen to the bank in the interim, and the directors would have to redeem those notes, those assets would have belonged to the directors, because the bank got the money, and the directors obligated themselves to purchase. We do not keep a separate record as to the collection of these items that had been sold. My testimony is this, that the note was paid back, either out of the proceeds of the collection of the items sold to the directors, or repurchased from the directors by the City National Bank, of these identical items sold. If a collection came in on an item we did not have, we would find where that item has been disposed of. I think we can get some record on it. The books will reflect that the notes went down $100,000.00 and the cash went up $100,000.00 on the day the transaction with the First National Bank was had. We will try and have that information for you tomorrow.

728 H. H. CARSON, recalled, examined in chief by Mr. Rogers, testified as follows:

I have the reports to the Compotroller that you asked for, the one of December, 1929, and prior to it, October 4, 1929.

Mr. Rogers:
We offer it in evidence.

(Marked "Defendant's Exhibit 25" as follows:)

SCHEDULE E—LOANS AND DISCOUNTS (including [illegible])

		Dollars			
1. Acceptances of other banks, payable in United States, owned by this bank	[illegible]				
2. Notes, bills, acceptances, and other instruments [illegible]	[illegible]				
3. Commercial paper bought in open market	[illegible]				
4. Loans to banks and trust companies	[illegible]				
5. Loans secured by U. S. Government and other securities (exclusive of loans to banks):			[illegible]	[illegible]	[illegible]
(a) To brokers and dealers in securities in New York City	[illegible]				
(b) To brokers and dealers in securities outside New York City	[illegible]				
(c) To others	[illegible]				
6. Real estate loans, mortgages, deeds of trust, and other liens on real estate:			[illegible]	[illegible]	[illegible]
(a) On farm land					
(b) On other real estate					
7. All other loans, including bank's own acceptances purchased or discounted					
TOTAL LOANS AND DISCOUNTS (must agree with Item 1 of "Resources")					
MEMORANDA:					
8. Loans secured by U. S. Government [illegible]					
9. Total loans eligible for [illegible]					

SCHEDULE F—UNITED STATES GOVERNMENT SECURITIES OWNED (including [illegible] under repurchase agreement)

1. Bonds (including bonds deposited to secure circulation)			[illegible]	[illegible]	[illegible]
2. Treasury notes	[illegible]				
3. Certificates of indebtedness	[illegible]				
4. All other	[illegible]				
TOTAL U. S. GOVERNMENT SECURITIES OWNED (must agree with Item 3 of "[illegible]")			[illegible]	[illegible]	[illegible]

SCHEDULE G—OTHER BONDS, STOCKS, AND SECURITIES OWNED (including securities sold under repurchase agreement)

1. Domestic securities:					
(a) State, county, and municipal bonds	[illegible]				
(b) Railroad bonds	[illegible]				
(c) Other public service corporation bonds			[illegible]	[illegible]	[illegible]
(d) All other bonds	[illegible]				
(e) Stock of Federal Reserve Bank					
(f) Stock of other corporations			[illegible]	[illegible]	[illegible]
(g) Collateral trust and other corporation notes	[illegible]				
(h) Municipal warrants			[illegible]	[illegible]	[illegible]
(i) All other, including claims, judgments, etc.	[illegible]				
2. Foreign securities:					
(a) Government bonds	[illegible]				
(b) Other foreign securities, including bonds of municipalities, etc.	[illegible]				
TOTAL OTHER BONDS, STOCKS, AND SECURITIES OWNED (must agree with Item 4 of "[illegible]")			222	505	21

SCHEDULE H—BILLS PAYABLE AND REDISCOUNTS

BILLS PAYABLE					
1. Advances received on this bank's own promissory note:					
(a) From Federal Reserve Bank	[illegible]				
(b) From other banks and trust companies	[illegible]				
2. Certificates of deposit issued to other banks and trust companies for money borrowed	[illegible]				
3. Advances received on other instruments given for the purpose of borrowing money	[illegible]				
REDISCOUNTS					
4. Notes and bills rediscounted, including notes and bills sold under repurchase agreement or with recourse to this bank:					
(a) With Federal Reserve Bank			[illegible]	[illegible]	[illegible]
(b) With other banks, trust companies, etc.	[illegible]				
TOTAL BILLS PAYABLE AND REDISCOUNTS (must agree with Item 20 of "Liabilities")			[illegible]	[illegible]	[illegible]

730

648

SCHEDULE A—NAMES OF OFFICERS AND DIRECTORS; LIABILITIES, IF ANY, AND SHARES OWNED

Par value of stock, per share, $ 100.00 (Enter the names of all officers and directors, whether or not they are included in both)

Number of shares of stock issued 10,000

1 Names of officers and directors	2 Official title	3 If citizen of place to which there is to change by "C"	4 Liability (individual or firm) on stock as indorser	5 Liability (individual or firm) as indorser or guarantor of obligations	6 Claims and suits pending	7 Overdrafts	8 Number of shares of stock owned (directors' shares)
J. A. Kemp	Chm.Board	D	$ 76 894 26	$229 819 10	$ None	$ None	877
A. T. Harrell	President	D	99 183 35	22 860 50	None	None	569
W. L. Robertson	Vice Pres.	D	4 800 00	3 771 36	None	None	448
C. E. Peeler	do	D	20 800 00	96 062 50	None	None	135
Oral Jones	V.P.-Cash.	D	5 060 27	4 000 00	None	None	200
W. S. Abbott	Asst.Cash.		4 887 [illegible]	2 040 00	None	None	10
R. E. Peeler	do		None	None	None	None	1
J. L. Jewell	do		None	None	None	None	25
E. S. Davis	Auditor		377 52	None	None	None	98
A. E. Britain	Director		20 401 25	4 [illegible] 00	None	None	97
C. E. Clark	do		46 363 93	77 302 23	None	None	173
L. E. Callum	do		19 830 00	None	None	None	140
E. F. Duncan	do		None	None	None	None	67
R. S. Harvey	do		50 312 50	3 074 15	None	None	240
Joella Humphrey	do		12 561 15	27 008 50	None	None	240
W. P. Davis	do		None	148 246 25	None	None	139
J. L. Hampton	do		None	None	None	None	200
J. A. Perkins	do		20 533 33	72 422 81	None	None	527
C. W. Butler	do		50 000 00	7 074 15	None	None	376
E. P. Timberlake	do		33 129 24	4 000 00	None	None	330
TOTAL			444 382 09	697 907 50	None	None	4608

649

SCHEDULE B—LOANS EXCEEDING THE LIMIT PRESCRIBED BY SECTION 5200 OF THE REVISED STATUTES

Renewed commercial paper and overdrafts must be considered as loans in arriving at a borrower's total liability; also balances due from nonmember banks exceeding 10 per cent of this bank's paid-up capital and surplus.

NAME	FULL AMOUNT OF LOAN OR BALANCE
	$
NONE	NONE

SCHEDULE C—CONTINGENT LIABILITIES
(Not included among Resources and Liabilities)

1. Commercial letters of credit issued, but not used	$ None
2. Travelers' letters of credit issued under guaranty or deposit of security, but not used	None
3. Other credits opened for customers, but not used	None
4. Other contingent liabilities	None
TOTAL	None

SCHEDULE D—BRANCHES AND BRANCH OFFICES

	Number
1. Within corporate limits of head office city	None
2. Elsewhere in United States	None
3. In foreign countries	None
TOTAL	None

733 The Witness:

That statement reflects $1,000,000.00 capital and $300,000.00 surplus, undivided net profits $285,690.76. I have the condensed statement before me as to the totals of the repurchase agreements from time to time, which I will give. On December 23, 1930, $461,679.11; On January 23, 1931, $277,487.50; March 24, 1931, $179,334.77; March 30, 1931, $480,323.07; June 16, $256,584.72; June 17, $381,807.16; July 15, $218,-174.64; July 16, 1931, $327,032.36; August 18, $184,-353.96; September 21, 1931, $183,615.98; December 29, 1931, $100,000.00; April 16, 1932, $25,000.00; September 23, 1932, $35,000.88; October 27, 1932, $42,000.00; November 17, 1932, $49,923.39; March 14, 1933, $27,895.00. That is the grand total of the repurchase agreements.

I have the records showing the condition of the bank from day to day since and including March 14, 1933, I will have those available tomorrow.

E. E. SCANNELL, a witness for the defendant, being first duly sworn, examined in chief by Mr. Rogers, testified as follows:

My name is E. E. Scannell, I am the present trustee of the Wichita Royalty Company. I came to
734 Wichita Falls in June, 1920, I first begun working for the Stone Printing Company, next for Ross Robertson, and then the Wichita Royalty Company, at which time Ross Robertson was trustee of that company. I became an employee of the Wichita Royalty Company in April, 1921. I was working on a salary at that time, I worked for that company up until I became trustee on the death of George Peckham, November, 1929, and since that time have been active as trustee. Mr. Peckham became trustee in the early part of 1923. At the beginning of Mr. Peckham's trusteeship, I looked after the business, in handling the details of the office, bookkeeping, etc, I was not an officer of the company. There

were no officers of the company except the sole trustee, I was classified as secretary and treasurer, but had no authority. Off and on I have owned a little stock in the Wichita Royalty Company, I did not own any stock in that company on January 1, 1926, and not until I became trustee. Prior to qualifying as trustee, I acquired one hundred shares at a par value of $1.00.

During Mr. Peckham's trusteeship, at first the office of the Wichita Royalty Company was in the Morgan Building, we gave that up and then moved to the City National Bank Building, then back to the Staley Building. Mr. Peckham maintained a private office near the Wichita Royalty Company. I wrote most of the checks against the deposit account of the Royalty Company, George Peckham and I each had authority to write checks. As a general rule the checks were written under the
735 direction of George Peckham, all checks were issued under his direction. Letters were sent out, under Mr. Peckham's trusteeship, sometimes regularly and sometimes periodically, and sometimes quite a ways apart to the stockholders. I could not tell you just how Mr. Peckham determined when a letter should be sent to the stockholders, he carried on the business and when he wanted to make a report to the shareholders, he did. He had no definite date to make such a report. He had approximately one thousand three hundred stockholders, all over the country and a few of them lived in Texas. I do not know of a single stockholder of the Wichita Royalty Company that lives now, or lived then, in the State of Texas. Some of them lived in foreign nations. I have a copy of most of the letters that were written to the stockholder by Mr. Peckham as trustee, during his trusteeship. Mr. Peckham supervised the preparation and release of those letters, I actually did the routine work.

Mr. Rogers:

We offer in evidence those letters.

(Marked "Defendant's Exhibit 26" as follows:)

736 DEFENDANT'S EXHIBIT 26.

Wichita Royalty Company,
406 Staley Building,
Wichita Falls, Texas.

To the Stockholders of Wichita Royalty Company:

We submit herewith a copy of our Balance Sheet showing the condition of our company at the close of the calendar year, December 31, 1925.

Since our report July 15th, we have made the following new purchases:

1-16 of the royalty in the South 32 acres in Block 21, Anderson Ranch lands, Archer County, Texas.

1-16 of the royalty in the South 60 acres of the West 80 acres of Block 22, Anderson Ranch lands, Archer County, Texas.

1-16 of the royalty in the North 25 acres of the East 50 acres of the West 100 acres of Block 19, Anderson ranch lands, Archer County, Texas.

1-16 of the royalty in the East 60 acres of the West 160 acres of Block 19, Anderson Ranch Lands, Archer County, Texas.

1-16 of the royalty in the North 40 acres of Block 21, Anderson Ranch Lands, Archer County, Texas.

737 1-4 of the royalty in the East 30 acres out of the D. Milligan Survey of the Mathis 2d Addition to the town of Cross Plains, Callahan County, Texas.

1-8 of the royalty in 320 acres out of Abstracts 1700 and 1701 of the E. Pankonin Survey, Kunkel Land, Young County, Texas.

1-8 of the land and royalty in 1070 acres M. L. Porter Land in Archer County, Texas. Cost $1250.00 cash and $2752.50 in equal payments due in 1, 2, and 3 years from date of purchase.

Our statements of July 15th showed $9,759.37 cash on hand at the close of the fiscal year, May 31, 1925. From June 1 to Dec. 31, 1925, we collected from all sources $32,446.07 making total cash available during period $42,205.44. The notes payable account $8,000.00 shown on our statement as of May 31st has been paid. During the period June 1 to December 31, 1925, our general expense including office rent, taxes and salaries, etc., was $5,455.57. During this period we paid out for the purchase of royalties, described above, $21,250.00 leaving us a cash balance on hand of $7,499.87 as shown by our statement.

There is a spirit of optimism prevailing throughout the oil industry that has not existed since 1920, and it is the consensus of opinion that 1926 will be one of the most prosperous years in the history of the oil industry. With the rapid decline of production throughout the United States and heavy increase in the price of crude oil throughout the year.

738

With the fulfillment of expectations for 1926, we naturally look for dividends and unless something unforeseen appears, believe that we will be in position to pay a dividend on April 15th, the amount to be determined at that time. If we do not have your correct mailing address please see that we have it, so that your checks and correspondence will reach you promptly.

Assuring you that we appreciate your co-operation and interest during the year 1925 and trust that the New Year will be a most profitable one, we are

Sincerely,

WICHITA ROYALTY COMPANY.

Balance Sheet, Wichita Royalty Company, Wichita Falls, Texas, at the Close of Business December 21, 1925.

Assets.

Cash on Deposit—		
Security National Bank	$ 137.61	
City National Bank	7,362.26	7,499.87
Accounts Receivable—		
Oil runs accrued but not yet paid for by pipe line companies, estimated		3,016.31
Producing Royalties Owned—		
Cost plus appreciation per Engineer's Valuation Reports		870,045.67
Permanent—		
Automobile, less depreciation..	810.00	
Furniture and Fixtures, less depreciation	981.24	1,731.24
		$882,353.09

Balance Sheet, Wichita Royalty Company, Wichita Falls, Texas, at the Close of Business Dec. 31, 1925.

Liabilities.

Notes Payable—		
For Royalties owned		$2,762.50
Reserve for Depletion—		
Per Company Books		83,518.86
Nominal—		
Capital Stock Authorized....	$1,000,000.00	
Less Unissued	185,085.00	814,915.00
Surplus—		
Per Company Books December 31, 1925 (—)		18,843.27
		882,353.09

740 Mr. Rogers:

Also the one of January 1, 1926, marked "Defendant's Exhibit No. 31," and reading as follows:

DEFENDANT'S EXHIBIT 31.

Balance Sheet, Wichita Royalty Company, Wichita Falls, Texas, at the Close of Business Dec. 31, 1925.

Assets.

Cash on Deposit—		
Security National Bank	$ 137.61	
City National Bank	7,362.26	7,499.87
Accounts Receivable—		
Oil runs accrued but not yet paid for by pipe line companies, estimated		3,016.31
Producing Royalties Owned—		
Cost plus appreciation per Engineer's Valuation Reports		870,045.67
Permanent—		
Automobile, less depreciation..	810.00	
Furniture and Fixtures, less depreciation	981.24	1,791.24
		$882,353.09

Liabilities.

Notes Payable—	
For Royalties owned	$2,762.50
Reserve for Depletion—	
Per Company Books	83,518.86

Nominal—		
Capital Stock Authorized....	$1,000,000.00	
Less Unissued	185,085.00	814,915.00
Surplus—		
Per Company Books December 31, 1925 (—)		18,843.27
		882,353.09

Wichita Royalty Company,
406 Staley Building,
Wichita Falls, Texas.

January 15, 1926.

To the Stockholders of Wichita Royalty Company:

We submit herewith a copy of our Balance Sheet showing the condition of our company at the close of the calendar year, December 31, 1925.

Since our report July 15th we have made the following new purchases:

742 1-16 of the royalty in the South 32 acres in Block 21, Anderson Ranch Lands, Archer County, Texas.

1-16 of the royalty in the South 60 acres of the West 80 acres of Block 22, Anderson ranch lands, Archer County, Texas.

1-16 of the royalty in the North 25 acres of the East 50 acres of the West 100 acres of Block 19, Anderson ranch lands, Archer County, Texas.

1-16 of the royalty in the East 60 acres of the West 160 acres of Block 19, Anderson Ranch Lands, Archer County, Texas.

1-16 of the royalty in the North 40 acres of Block 21, Anderson Ranch Lands, Archer County, Texas.

1-4 of the royalty in the East 30 acres out of the D. Milligan Survey of the Mathis 2d Addition to the town of Cross Plains, Callahan County, Texas.

1-8 of the royalty in 320 acres out of Abstracts 1700 and 1701 of the E. Pankonin Survey, Kunkel Land, Young County, Texas.

1-8 of the land and royalty in 1070 acres M. L. Porter Land in Archer County, Texas. Cost $1250.00 cash and $2762.50 in equal payments due in 1, 2, and 3 years from date of purchase.

Our statements of July 15th showed $9,759.37 cash on hand at the close of the fiscal year, May 31, 1925. From June 1 to Dec. 31, 1925, we collected from all sources $32,446.07 making total cash available during period $42,205.44. The Notes payable account $8,000.00 shown on our statement as of May 31st has been paid. During the period June 1 to December 31, 1925, our general
743 expense including office rent, taxes and salaries, etc., was $5,455.57. During this period we paid out for purchase of royalties, described above, $21,250.00, leaving us a cash balance on hand of $7,499.87 as shown by our statement.

There is a spirit of optimism prevailing throughout the oil industry that has not existed since 1920, and it is the consensus of opinion that 1926 will be one of the most prosperous years in the history of the oil industry. With the rapid decline of production throughout the United States and heavy increase in the demand for refined products, we look for a steady increase in the price of crude oil throughout the year.

With the fulfillment of expectations for 1926 we naturally look for dividends and unless something unforseen appears, believe that we will be in position to pay a dividend on April 15th, the amount to be determined at that time. If we do not have your correct mailing address

please see that we have it, so that your checks and correspondence will reach you promptly.

Assuring you that we appreciate your cooperation and interest during the year 1925 and trust that the New Year will be a most profitable one, we are

Sincerely,

WICHITA ROYALTY COMPANY.

744 Mr. Rogers:

Next offer in evidence from page 924 of the record on the other trial, instrument dated March 15, 1927.

DEFENDANT'S EXHIBIT 27.

Wichita Royalty Company,
509 Security National Bank Building,
Wichita Falls, Texas.

March 15, 1927.

To the Stockholders of Wichita Royalty Company:

Due to the rapidly increasing demand for oil products the industry has been taxed to keep the supply abreast of the demand, and consequently there have been periods of shortage in supply, when crude oil prices were high, and corresponding periods of over-supply, when crude prices were considerably less than the cost of production. The heavy demand for crude oil during the past two years has brought about a huge "wildcat" drilling campaign in every state, where oil possibilities exist in an effort to bring more oil to the surface. As a result, numbers of new fields have been opened up with large flush production, which has temporarily brought about an overproduction, and has forced crude oil prices to a low level. This means that where we have been receiving $2.00 to $2.50 for our oil, we will now receive from $1.10 to $1.40 until conditions aright themselves, which we hope will

not be long. At first thought a drop of seventy-five cents per barrel would apparently not make a great deal of difference, but when we take into consideration that it cuts off a third or a fourth of our monthly in-
745 come, it means a great deal, especially to Wichita Royalty Company whose development program is so definitely defined. The prime offender in this temporary over-production at present is the great Seminole field in Oklahoma, which is making more than 300,000 barrels of oil per day.

Since our last report a number of valuable properties have been acquired and new production has been developed both on and near some of our previous purchases greatly enhancing their value. Of the purchases listed in our last bulletin all now have production either on them or offsetting. The five royalty interests on the Anderson Ranch in Archer County, Texas, all have production, and we are receiving our proportionate part of the oil produced. An oil pool has recently been found on the 320 acres in the Pankonin Survey, Abstract 1701 in Young and Archer Counties, also Abstract 170, and we have already received more than 100% on our investment in this property.

The Oldham Pool has recently been opened up on the farm offsetting the Porter Ranch (1070) acres, in which we own an eighth in both the royalty and the land in fee. This pool will doubtless be extended onto the Porter Land within a very short time. Also the Hayter Royalty in Archer County which did not have production at the time of the purchase, is now producing.

We have always held out faith in the deep sand underlying our properties in Young County, Texas,
746 and recent developments in this section have uncovered this deep sand on the Stovall Land about a half mile northwest of our O. P. & G.-Graham royalty. From our property this well looks only a stone's throw, and we are confident that this sand also

underlies our property. The following article is quoted from the Wichita Daily Times, January 6, 1927:

"After flowing continuously for almost three weeks, the C. E. Stovall well on the Stovall land in south Young County is producing at the rate of 70 barrels of oil per hour, according to the latest reports reaching here Thursday morning.

"The well is the old Stovall No. 1 deepened to 3888 feet and completed on Christmas Day. Operators believe it to be the greatest discovery in this district in years.

"It is also reported that the Ruth Ada Oil Company has made a location on Block 31 to the east of the Stovall Well, E. C. Stovall is rigging up on his No. 5 300 feet north of No. 1 well, while the Panhandle Refining Company is preparing to deepen its No. 17 well to the Stovall pay. There are 18 new derricks or drilling wells in South Young County surrounding the Stovall land."

In Wilbarger County we have purchased 1/4 of the royalty out of the Stephens Land, described as follows:

747 North 20 acres of South 40 acres of North 60 acres of West half of Northeast Quarter Section 83, Block 14, H. & T. C. R. R. Survey, operated by Barkley & Meadows.

South 20 acres of South 40 acres of North 60 acres of West Half of Northeast Quarter Section 83, Block 14, H. & T. C. R. R. Survey, operated by Humble Oil & Refining Company.

Each of the above properties have ten wells. There are four producing sands in the south Vernon Field in Wilbarger County, which accounts for the large number of wells on these leases.

Probably the greatest contribution to the industry in the way of new producing territory during the past year was the development of the great fields in the Panhandle of Texas. Development there has added hundreds of square miles of prospective territory to the Mid-Continent field. A recent issue of the Oil & Gas Journal states: "In the Panhandle much is expected of the territory that includes the South Half of Moore County, the west edge of Hutchinson County, the north half of Potter County and the east half of Carson and Wheeler Counties." On well defined geological structures in the most promising areas of the Panhandle we have purchased a number of royalty properties. Around these recent developments have greatly increased their value, and some of them we believe are oil lands.

One of the most promising geological structures in the Panhandle is located in Southeastern Hartley County, and we have secured half of the royalty under
748 Section 54, of the Bravo Ranch Lands in Southeastern Hartley. A number of tests have been started in this district and a successful completion will mean much to Wichita Royalty Company.

Wheeler County is one of the newer producing areas of the Panhandle of Texas that is rapidly coming to the front as one of the leading fields of the Panhandle district. On the large geological structure in the Big Bend of the North Fork of the Red River, lying in between the producing fields in Eastern Wheeler and Western Gray Counties, we have purchased royalty interests in 1200 acres checkerboarded along this structure for 5 miles.

East 320 acres of Section 54, Block 24, H. & G. N. R. R. Co. Survey, lease owners, Murchison & Fain and the Humble Oil & Refining Company, jointly, and the Gulf Production Company.

Northeast 160 acres of Section 47, Block 24, H. & G. N. R. R. Co. Survey, lease owners, Murchison & Fain and the Humble Oil & Refining Company, jointly.

East 320 acres of Section 57, Block 24, H. & G. N. R. R. Co. Survey, lease owners, Texas Company.

North 320 acres of Section 45, Block 24, H. & G. N. R. R. Co. Survey, lease owners, Marland, Roxana and Tidal Oil Companies.

West 80 acres of the S. E. 1/4 of Section 43, Block 24, H. & G. N. R. R. Co. Survey, lease owner, Magnolia Petroleum Company.

749 Since we purchased our properties a number of wells have been brought in close to and in between our properties lying along this structure, probing up a large oil field, Section 55, where the Murchison & Fain-Humble No. 1 Binkley Caine was reported as an 800 barrel well, is offset on three sides with our properties. In the Northwest Quarter of Section 40, the Magnolia Petroleum Company brought in a well making a thousand barrels, and in Section 42 of the Gibson Oil Company has a well which made 85 barrels per hour a little more than 2000 barrels per day. A few wells of this size on our properties would soon build our income to a very substantial figure. This property is all under lease to the major companies and we look for a heavy development campaign along this structure when spring opens.

Across the river in Gray County in Extremely likely territory, where a number of wells have already been brought in a well making a thousand barrels, and in Section 42 the Gibson Oil Company has a well which made 85 barrels per hour or a little more than 2000 barrels per day. A few wells of this size on our properties would soon build our income to a very substantial figure. This property is all under lease to the major companies and we look for a heavy development campaign along this structure when spring opens.

Across the river in Gray County in extremely likely territory, where a number of wells have al-

750 ready been brought in we have secured royalty interests in the following properties:

South 320 acres of Section 61, Block 25, H. & G. N. R. R. Company Survey.

West half of S. E. 1-4 and N. E. 1-4 of the S. E. 1-4 of Section 59, Block 25, H. & G. N. R. R. Co. Survey.

Northwest quarter of Section 60, Block 25, H. & G. N. R. R. Co. Survey.

Production in the Panhandle seems to be analogous more or less with that of the Garber, Tonkawa and Burbank fields in Northern Oklahoma, and the opinion is pretty general that there is a possibility of a series of pools to be found between the Panhandle and these Oklahoma fields, and a great many tests are being drilled in the counties of Western Oklahoma in an attempt to pick up these series of pools. In very likely territory in Ellise County, Oklahoma, just a short distance over the Texas-Oklahoma line we have secured half the royalty and the lease on the S½ of N. E. ¼ of Section 35, Township 19N, Range 21w.

At no time in the history of the industry has prospecting for oil been carried on so extensively and at such a feverish pitch, with the result that many new pools and districts have been added to the production ranks during the past year. In West Texas alone, 8 new Counties were added to the producing column during 1926, opening a vast territory for prospecting. Many more new pools will be opened this year and next, bringing millions of dollars of New wealth to the industry. We believe that Wichita Royalty Company should have its probate portion and as long as we continue actively trading and buying in these fields we are confident we can make money for the company. From June 1st to December 31st we collected $36,435.30 and after paying our overhead expenses we have invested the balance in properties. It is our opinion that for the present all thought of dividends should be forgotten and that the income from our properties should be invested in additional properties to build up the book value of our stock, depleted as a result of what proved to be too large a dividend disbursement during the first three years of operation Wichita Royalty Company paid 36% annu-

751

ally in dividends and this excessive rate of dividend has seriously impaired the company's operations. Had Wichita Royalty Company paid a more conservative dividend during this period, and have reinvested its surplus in additional properties, it would have undoubtedly been an outstanding success. However by foregoing the small indefinite payments for a while, we are confident we can build this company back where it should be. It is going to take plenty of hard work on our part and patience on yours, but in the end we are confident it will be well worth the effort.

Sincerely,

WICHITA ROYALTY COMPANY.

752 Mr. Rogers:

Also from the record on the other trial, page 931, dated August 1, 1928.

DEFENDANT'S EXHIBIT 28.

Wichita Royalty Company,
1002 Staley Building,
Wichita Falls, Texas.

August 1, 1928.

To the Stockholders of Wichita Royalty Company:

When our bulletin was sent out March 15, 1927, the oil business was just beginning on the worst and most drastic period of depression in its history, a period that has continued well over a year and from which there seems no immediate relief. Quoting from an Editorial in the New York Times: "Today the industry is in a panic—Great Companies are writing losses in red ink, and independent operators face ruin."

Practically every Company both Major and Independent showed huge declines in their profits last year, while many of them sustained heavy losses, resulting in the passing of their dividends, notwithstanding the fact that they have been operating for years, and years and have had time to build up immense reserves. Out-

standing among these were Marland, Simms, Continental and Prairie, one of the oldest and largest so-called Standard Oil Units in operation in the Mid-Continent field.

Seminole has now dropped below 300,000 barrels from a peak of 527,400 barrels daily, or a little more than a fifth of the production of the entire
753 United States, which produces more than 70% of the Total World's Crude oil production. But to take its place or present even a greater menace to the price structure are the new fields of Crane, Upton, Crockett, Reagan, Winkler and Pecos Counties which according to gauges adopted for recent proration schedules could produce at the rate of 3,000,000 barrels a day if allowed unrestricted flow. While these fields for the most part produce low gravity oil, yet they have flooded the market with huge quantities of cheap oil from which we see no relief in the way of upward price revisions before late in the year.

These depressions will come in every line of business but it seems that for the past four or five years the oil business has had more than its share, and we feel that the time is not far off when some form of regulation will be put into force to prevent the great economic waste caused by competitive drilling under the present system of unrestricted development of new fields; in fact such a system was finally worked out in Seminole and is now being put into effect in the fields of southwest Texas; however in both places too late to save the industry from the most drastic period of depression in its history: but possibly in time to prevent a recurrence in the near future, and to help maintain a balance between supply and demand. This proration is a step in the right direction and through its adoption the problem of over-production has been solved and in
754 our opinion an era of continuous prosperity is in store for the oil business in the future.

Not only is there great loss to the producers in these flush fields who are compelled to sacrifice their oil at

most any price, but it hurts in greater proportion the producer in old settled fields where the flush production is already gone and the fields have settled down to the average pumper, the classification in which our properties come. True, we have no expense of operation of the wells and whatever production is received from the properties we get our proportionate part, yet at the same time each barrel of oil taken from the ground leaves just that many less to be taken out, and there is a great difference in the ultimate return from a property when the oil averages a $1.00 a barrel and when it averages $2.50 per barrel, although the ultimate number of recoverable barrels is the same.

Consequently in the face of these conditions we have not made the progress during the past year we had reason to expect, and furthermore the lack of operating capital has worked a great handicap upon our efforts. New financing would go a long way in speeding up the rebuilding and haste in the return of this Company have put $150,000,000 into enlargeing its various operation, and this is only one of the many larger operating companies of the Mid-Continent field. The oil industry is our second largest industry, an industry that has been developed almost within the present generation, and we as a small integral part of this
755 giant industry must keep pace with the expansion. Our sole income is from our many properties scattered throughout Oklahoma and Texas and to secure any working capital for expansion it is necessary for us to sacrifice all thought of dividends for the present and for this reason we have made no payments this year, and until conditions become normal in the industry, which we hope will not be long now, no dividend payments will be made.

Development in proven pools in the high gravity area has been practically at a standstill due to the low prices of crude. However a new pool has just been opened up on our royalty on the C. F. Kunkel Land Block 4, Abstract 1701 Young County. This block consists of 160

acres operated by the Prairie, and while only one well has as yet been completed, indications are that the pool will extend across the entire tract. This property along with the Dietrick, Abstract No. 1700, which has long since returned the cost of both pieces, was purchased in 1926 before production was found and were secured at a very cheap price. It also bears out our contention that every acre of land in Texas with oil possibilities will eventually be proven, and we need only to purchase the royalty and wait for development by the operating companies, in the meantime collecting our annual rentals and bonus money from sale of leases. It may be one year or ten, but it will come, and since the royalty right is perpetual and does not participate in the drilling or operating expense, only patience
756 is required after the original purchase is made.

When Wheeler County began to loom as a real factor in Panhandle production, the price of Wheeler County Crude was reduced to 75c per barrel which practically halted all new activity in the area. Wichita Royalty Company owns royalty interests in 1200 acres in Wheeler County checkerboarded over a five mile stretch along the North Fork of the Red River on a geological structure that has already yielded a number of pools from the granite wash, and on which we are confident a number of additional pools will be found with the probability all will eventually be joined. Piney Oil & Gas Company near the center of the northeast quarter of Sec. 44 has what appears to be an edge well and since we flank this tract on 3 sides in Section 43, 45 and 57, believe the return of normal conditions will bring about a number of operations on our properties, resulting in some nice production. We also own in Sections 47 and 54, which lie between the Fain McGaha production in Section 55 and the new fields in Gray County.

A number of new pools have been opened in Gray County within the past year, with wells ranging from two to five thousand barrels not uncommon. The Travis

well on the Back Section 44, Block 25 which was reported at 5,000 barrels lies about two miles southwest of our royalty in Sections 60 and 61. These tracts are under lease to Skelly Oil Company and the Empire Oil & Gas Company, two of the largest Independent producers of the Mid-Continent field and with the return of normal conditions believe we will get some development. We purchased this property on the basis of $30.00 an acre in 1926, and since a number of sales have been made nearby on a $100.00 base. However, should this property prove oil land our interests here would go a long way toward putting us back on a regular dividend basis. A royalty owner in this field recently sold his royalty for a million dollars and another is asking two million for his.

757

The eyes of the Petroleum world are at present focused on West Texas where a most abnormal condition exists, and where it is said a barrel of oil can be purchased for 30c, but a barrel of water costs a dollar. Crane, Upton, Reagon and Winkler Counties are yielding a veritable flood of oil while Pecos County is startling the world with reports of 75 and 90 thousand barrel wells from the shallow depth of a thousand feet. This production is found in a barren desert waste which was considered of no value whatever, and from what is geologically termed the Permian basis, a folding which a few years ago geologists contended would never produce a drop of oil. On good geological structure in Pecos County we have secured a fourth of the royalty under 640 acres in Block No. 3. Survey No. 206 T. & P. R. Co. Survey under lease to the Pure Oil Company. With anything like a normal price for crude a huge wildcat drilling campaign will be started in Pecos County, and we hope to be able to acquire several properties on good geology. Wells of 50 and 75 thousand barrel calibre pay off rapidly, and a section of oil land here would yield an immense fortune.

758

Sincerely,

WICHITA ROYALTY COMPANY.

Balance Sheet, Wichita Royalty Company, Wichita Falls, Texas, at the Close of Business May 31, 1928.

Assets.

Cash on Deposit—		
Security National Bank	$ 80.67	
City National Bank	250.07	$ 330.74
Receivables—		
Per Company Books		12,410.03
Property Account—		
Cost plus Appreciation per Valuation Reports. No allowance for Depletion		893,716.16
Permanent—		
Furniture and Fixtures, Less Depreciation		716.33
		$907,172.26

Balance Sheet, Wichita Royalty Company, Wichita Falls, Texas, at the Close of Business May 31, 1928.

Liabilities.

Notes Payable—		
For Properties Purchased		$49,095.68
Reserve—		
For Depletion of Royalties		513,350.79
Nominal—		
Capital Stock Authorized	$1,000,000.00	
Less Unissued	185,085.00	814,915.00
Surplus—		
Per Company Books May 31, 1928 (—)		470,198.21
		$907,172.26

Mr. Rogers:

Also on page 939 of the record of the former trial, as of May 31, 1929. Included in the letter is the balance sheets of the company also, which is introduced.

(Instruments marked "Defendant's Exhibit 29" and reading as follows):

760 DEFENDANT'S EXHIBIT 29.

Wichita Royalty Company,
1002 Staley Building,
Wichita Falls, Texas.

To the Stockholders of Wichita Royalty Company:

General business conditions in the United States so far this year have been reasonably good, many industries showing substantial gains. The oil industry has shown some improvements and the consumption of oil and gasoline has increased at a rapid rate. For the first five months' period this year, total demand for petroleum and all products was increased 248,000 barrels daily, or 11% over the same period of 1928. Total supply, which includes domestic production and imports for the same period has shown an increase of 13.5%. Total supply has exceeded total demand and storage has been increased, but due to the rapid rate of increase in consumption, the number of days' supply at the end of May this year amounted to 212 days, which compared with 221 days' supply on hand at the end of May, 1928.

Crude runs to stills in the Mid-Continent area for June where 585,030 barrels daily, for 565,800, August 555,250 and the estimate for September is 552,300 barrels daily. Even with unfavorable weather conditions prevailing in the Central States consumption of gasoline in the United States was 20% more in

761 May of this year than in the same month last year, and for the five months period the

increase has amounted to 16.3%. The estimated June rate of production and imports of petroleum exceed the demand by 4.6%. All of this surplus, however, was in California where large flush production was being developed, but this condition is expected to improve, when their new gas conservation law becomes effective. In fact the Santa Fe Springs field production from the 6,000 foot level has already shown a marked decline from its peak attained on July 20th.

The past three or four years have proven and developed many new ideas in the production of oil. Many of the old shallow fields are now producing from deeper strata. The Tonkawa field in Oklahoma, in which we have a number of properties developed eight sands ranging 1200 to 4000 feet. In Seminole, the Wilcox sand was found to produce more oil than was previously recovered from all of the shallow sands of the area, while the new Wilcox sand recently discovered on the edge of Oklahoma City below 6,000 feet gives indications of flooding the crude oil market and further reducing crude prices. In the heart of the Reagan pool in West Texas a well has been flowing more than 2,000 barrels per day for almost a year from a depth of 8,500 feet, and it is not unreasonable to expect that production in the next few years will be obtained from depths of ten thousand feet.

762 Most all of our properties are now producing from shallower sands and in a number of the areas in which these properties are located, it is firmly believed that deeper oil will be found than is now producing. Our royalty interests are perpetual and should deeper oil be found on them at some future date we shall participate in our proportionate part without expense to us.

Very little net profits have accrued from oil production the last year and a half, due to overproduction and consequent low prices. However, we are very confident that this crude situation will adjust itself at some future date, but just when this will be, no one can safely

predict. When this time comes our income should be materially larger and we hope to be in position to resume dividends.

Yours truly,
WICHITA ROYALTY COMPANY.

Balance Sheet, Wichita Royalty Company, Wichita Falls, Texas, at the Close of Business May 31, 1929.

Assets.

Cash in Banks—		
City National Bank	$1,332.23	
Security National Bank	80.67	$1,412.90
Receivables—		
For Sale of Oil		897.17
Permanent—		
Furniture and Fixtures, less Depreciation		643.80
		$894,310.03

Balance Sheet, Wichita Royalty Company, Wichita Falls, Texas, at the Close of Business May 31, 1929.

Liabilities.

Notes Payable—		
For Properties Purchased		$ 34,195.68
Reserve—		
For Depletion of Royalties		526,014.84
Nominal—		
Capital Stock Authorized	$1,000,000.00	
Less Unissued	185,085.00	814,915.00
Surplus—		
Per Company Books, this date (—)		480,815.49
		$894,310.03

Mr. Rogers:

Also on page 994. of the record of the former trial, dated November 3, 1929:

764 DEFENDANT'S EXHIBIT 30.

Wichita Royalty Company,
Staley Building,
Wichita Falls, Texas.
November 30, 1929.

To the Stockholders of Wichita Royalty Company:

About 5 o'clock on the afternoon of November 7th, Mr. George W. Peckham, Trustee for this Company, had started to his home and family, when he was suddenly stricken with a heart attack and died in a few moments without regaining consciousness.

Mr. Peckham, a comparatively young man, being only 46 years of age, was apparently in good health and quite active in the oil development of the northwest Texas area. He was a man of sterling character, of keen business judgment, and a conscientious and tireless worker, whose death is indeed an irreparable loss, not only to his family and to the community, but to this Company; and while we know that the "Great Reaper" must come for us all, yet we cannot but wonder sometimes, why those of greatest service cannot longer be spared.

Wichita Royalty Company, a Common Law Trust, operates under a Declaration of Trust, which provides for the administration of its affairs under the direction of a sole Trustee. This declaration of Trust pro-

765 vides that in case of the death or resignation of the Trustee, the Judge of the 30th Judicial District of the State of Texas shall appoint a successor. Judge Allan Montgomery of this Court, has appointed the writer as Trustee to succeed Mr. Peckham, and on the succeeding Page there appears a photostatic copy of this appointment.

The writer has spent several years in the service of this Company, but the actual direction is a new responsibility. However, I shall do my best in representing and working to its best interests.

Yours very truly,
E. E. SCANNELL,
Trustee.

(Copy of appointment of E. E. Scannell as Trustee by Allen D. Montgomery, Judge of the 30th District Court on November 12, 1929, was given on succeeding page of this letter—Not reproduced here as same is already in evidence.)

Mr. Rogers:
Also dated September 30, 1929.

(Instrument marked "Defendant's Exhibit No. 32" and reading as follows:)

766 DEFENDANT'S EXHIBIT 32.

Wichita Royalty Company,
1002 Staley Building,
Wichita Falls, Texas.
September 30, 1929.

To the Stockholders of Wichita Royalty Company:

General business conditions in the United States so far this year have been reasonably good, many industries showing substantial gains. The oil industry has shown some improvement and the consumption of oils and gasoline has increased at a rapid rate. For the first five months' period this year, total demand for petroleum, and all products was increased 248,000 barrels daily, or 11% over the same period of 1928. Total supply, which includes domestic production and imports for the same period has shown an increase of 13.5%. Total supply

has exceeded total demand and storage has been increased, but due to the rapid rate of increase in consumption, the number of days' supply at the end of May this year amounted to 212 days, which compared with 221 days' supply on hand at the end of May 1928.

Crude runs to stills in the Mid-Continent area for June where 585,030 barrels daily, for July 565,800, August 555,250 and the estimate for September is 552,300 barrels daily. Even with unfavorable weather conditions prevailing in the Central States consumption of gasoline in the United States was 20% more in May
767 of this year than in the same month last year, and for the five months period the increase has amounted to 16.3%. The estimated June rate of production and imports of petroleum exceed the demand by 4.6%. All of this surplus, however, was in California where large flush production was being developed, but this condition is expected to improve, when their new gas conservation law becomes effective. In fact the Santa Fe Springs field production from the 6,000 foot level has already shown a marked decline from its peak attained on July 20th.

The past three or four years have proven and developed many new ideas in the production of oil. Many of the old shallow fields are now producing from deeper strata. The Tonkawa field in Oklahoma, in which we have a number of properties developed eight sands ranging from 1200 to 4000 feet. In Seminole, the Wilcox sand was found to produce more oil than was previously recovered from all of the shallow sands of the areas, while the New Wilcox sand recently discovered on the edge of Oklahoma City below 6,000 feet gives indications of flooding the crude oil market and further reducing crude prices. In the heart of the Reagan pool in West Texas a well has been flowing more than 2,000 barrels per day for almost a year from a depth of 8,500 feet, and it is not unreasonable to expect that production in the next few years will be obtained from depths of ten thousand feet.

Most all of our properties are now producing from shallower sands and in a number of the areas in which these properties are located, it is firmly believed
768 that deeper oil will be found than is now producing. Our royalty interests are perpetual and should deeper oil be found on them at some future date we shall participate in our proportionate part without expense to us.

Very little net profits have accrued from oil production the last year and a half, due to overproduction and consequent low prices. However, we are very confident that this crude situation will adjust itself at some future date, but just when this will be, no one can safely predict. When this time comes our income should be materially larger and we hope to be in position to resume dividends.

Yours truly,
WICHITA ROYALTY COMPANY.

Balance Sheet Royalty Company, Wichita Falls, Texas, at the Close of Business May 31, 1929.

Assets.

Cash in Banks—		
City National Bank ....$	1,332.23	
Security National Bank .	80.67	1,412.90
Receivables—		
For sale of oil ..		897.17
769 Property Account—		
Cost plus Appreciation per valuation Reports. No allowance for depletion ...		891,356.16
Permanent—		
Furniture and Fixtures Less Depreciation ..		643.80
		$894,310.03

Liabilities.

Notes Payable—		
For Properties Purchased		$ 34,195.68
Reserve—		
For Depletion of Royalties		526,014.84
Nominal—		
Capital Stock		
Authorized $1,000,000.00		
Less Unissued 185,085.00		814,915.00
Surplus—		
Per Company Books		
This date	(—)	480,815.49
		$894,310.03

Mr. Rogers:

Also February 2, 1931.

(Marked "Defendant's Exhibit No. 33" and reading as follows:)

770 DEFENDANT'S EXHIBIT 33.

Wichita Royalty Company,
Wichita Falls, Texas.
February 2, 1931.

To the Stockholders of Wichita Royalty Company:

It develops that in 1926 the then sole trustee, George W. Peckham, now deceased, borrowed in the name of the Company from the City National Bank of Wichita Falls, Texas, substantial monies, and from the company's funds paid for a half interest in a suburban site known as Marlborough Addition to the Ctiy of Wichita Falls, Texas, the other half being purchased by executives

of the City National Bank as individuals. At the time of Mr. Peckham's death the title to this interest stood of record in the name of George W. Peckham, an unrecorded deed to the Company being in the safe.

The Declaration of Trust of Wichita Royalty Company shows its general purpose to be the purchase and sale of oil and gas royalties and other oil and gas properties. It would seem the Trustee had no authority to bind the Company in a manner beyond the purpose of the organization.

At the time of this original transaction the Company was free from debt except current bills. Marlborough Addition was not a successful venture and the bank has filed suit. The present Trustee refused payment and refused to yield his present conviction that the
771 bank's executives knew that the Trustee exceeded his authority in the transaction, as he was personally a party to the Marlborough transaction and on the other hand made the loan for the bank to the Company out of which funds the former Trustee paid for this interest by checks cleared through said bank.

The Estate of George W. Peckham being insolvent the bank thereupon filed suit against the Company for a recovery of the monies and the trial is set for February 16, 1931, Homer Lee, City National Bank Building, Wichita Falls, Texas, being in charge of the Company as Receiver.

Attorneys for the bank have ascertained the names of stockholders of the Company and claim under the Texas law the stockholders are personally liable. Courts generally try to protect the interest of non-resident parties and it was thought best to let the matter go to Court so that with all the facts, too many here to detail, the Court could enter a judgment protecting the interests of all.

The Court should know the interest in the matter of the stockholders. Judge W. W. Cook, Wichita Falls, Texas, is the Judge who appointed the Receiver and who will try the case. It is hoped the matter can be

passed to a date later than February 16th, but that matter is entirely with Judge Cook.

Very truly yours,
E. E. SCANNELL,
Trustee.

772 Mr. Rogers:
Also January 15th, 1934.

(Marked "Defendant's Exhibit No. 34" and reading as follows:)

DEFENDANT'S EXHIBIT 34.

Wichita Royalty Company,
Wichita Falls, Texas.
January 15th, 1934.

To the Stockholders of Wichita Royalty Company:

In our letter of February 2, 1931, you were advised that the company was involved in a lawsuit with the City National Bank of Wichita Falls, Texas, and this suit is still pending. Since the filing of this suit many letters have been received, requesting a more detailed explanation of the nature of this litigation, and, urging that everything possible be done to protect the company's interests.

I regret exceedingly that our financial condition does not justify a copy of the Court Record for each shareholder, that you might know exactly what transpired. However, there are 1114 pages of testimony and about 1000 pages of brief have been filed, so you can realize how difficult it is to summarize in a letter, a case so complicated and with so many ramifications. Its general nature, though, is this:

In 1925 and until his death in 1929, George Peckham as Trustee operated your company and at the same time engaged extensively in private enterprises. He and his

brother, W. H. Peckham, joined by J. T. Har-
773 rell, President of the City National Bank, and J. A. Kemp, Chairman of the Bank's Board, as partners, the four bought and developed a residential addition to Wichita Falls known as Marlborough Addition. At a time when the Marlborough partnership owed more than $50,000.00 and George Peckham personally owed more than $27,000.00 to the City National Bank, and large sums were then needed to develop the Marlborough partnership, Peckham's personal credit being exhausted at the bank, he negotiated with his partner, J. T. Harrell, President of the City National Bank, who loaned $40,000.00, issuing a deposit slip to Wichita Royalty Company, Peckham buying his brother's interest in Marlborough and causing Wichita Royalty Company's checks to be drawn on the bank, *payable to the bank*, but deposited to George Peckham's personal account, and then on his personal account he drew checks in payment to the loaning banker and partner, J. T. Harrell of George Peckham's personal debt, other personal checks in payment to W. H. Peckham for George Peckham's purchase of a quarter interest in Marlborough, and the remaining trust money was disbursed from George Peckham's private account, to pay his personal obligations. Later George Peckham executed but did not record, a deed to Wichita Royalty Company for half interest in Marlborough Addition, the deed reciting that Wichita Royalty Company assumed the more than $50,000.00 of indebtedness. The deed was delivered to the company's bookkeeper, who was told to keep the deed off record and to tell no one about it.

Throughout his remaining life Peckham treated
774 Marlborough Addition as his own. You were never advised of this transaction.

Marlborough continued to prove, of course, a losing venture and the bank foreclosed all of its assets and filed suit for more than $14,000.00 deficiency judgment against the Wichita Royalty Company. The bank likewise filed suit in excess of $22,040 as the unpaid

balance of the $40,000.00 loan Harrell made to Peckham and for which Peckham executed the trust's notes. The trust employed counsel and defended the bank's suit upon the theory that the bank was a party to Peckham's misuse of trust funds and other defenses, and as a result of careful investigation made, filed a cross-action based upon approximately fifty checks drawn under Peckham's direction, all payable to the bank on which they were drawn, but each deposited to the personal account of G. W. Peckham and mixed with his private funds and by him checked out upon his personal checks, some of the money going to J. T. Harrell, personally, who made the original loan, some going to the bank in payment of Peckham's personal debt, and the balance expended by Peckham for purposes other than the business of the trust. It is contended that Harrell and the bank were parties to Peckham's wrongs and are liable for all funds used by Peckham personally. The trial Court held that our cause of action was barred by limitation, but the Appellate Court has reversed this ruling.

To make his books balance, Peckham caused the voucher checks to show, and the books to reflect various purposes of the several checks, some bearing
775 the notation to be applied to the Company's debt to the bank, some to pay for or improve Marlborough Addition, and the remainder to pay for oil properties. Of the oil properties so described, some were never conveyed to the trust, some Peckham had no title to, and the rest were transferred to the company by G. W. Peckham as an individual at a price fixed by himself, all without notice to you. No property not producing oil at the time of transfer to the Company ever produced a drop of oil subsequently, although large sums of money were involved.

The trust takes the position that has been sustained by the Appellate Court, that the bank and Harrell were parties to Peckham's personal transactions with the Company's money, that the Company is not bound by any of the transactions in that as to Marlborough Ad-

dition Peckham had no authority to purchase the suburban property, when his only authority as provided under the Declaration of Trust, was to deal in the oil business, and further, that as to Marlborough Addition, no deed was ever delivered and our Company never had any title to it. It is further the contention that as to all properties alleged to have been transferred to the Company, whether residential property or oil property, Peckham could not bind the company when he was both seller and buyer, profiting substantially in the transactions and unloading properties at a price which he personally had paid long before, but which in fact became valueless. That though he died insolvent,

776 yet the bank is liable for Peckham's obligations to the Company because it was a party to Peckham's conduct and participated therein. These matters your present Trustee submitted to the Court as soon as he was advised of the rights of the Company and numerous letters have been received from stockholders commending him on his trying to prevent the bank's collecting an unjust debt and from taking the remainder of the assets of the Company, and also in his endeavor to recover for the Company all that it has lost under the former Trustee through the bank's participation and that of its president.

The Receivership granted in 1931 was appealed from and dissolved by the Court of Civil Appeals. Upon trial of the bank's cause and the Company's cross-action, the District Court gave judgment for the Bank, but this judgment has been reversed by the Court of Civil Appeals at Fort Worth. Motions for rehearing are pending and that Court has not rendered its final decision, but regardless of which way it goes, the case will probably be appealed to the Supreme Court.

Upon District Court judgment in favor of the bank our property in Oklahoma was attached and pipe line companies in Texas and Oklahoma were advised not to pay out runs and Company properties and income have been tied up since February, 1932. So you see it has

been almost impossible financially to prosecute this suit. I have always believed this case should never have come to Court, but should have been straightened out by the Peckham family and the bank as was promised me when I first agreed to accept the Trustee-
777 ship, and in the writer's opinion it would have been done, had not those involved believed that sufficient pressure could be brought against the Trustee and to so intimidate him as to cause him to sacrifice your interests, and also believed that, in any event, if all of the Company's properties and income were tied up, it would not be financially able to protect its interests inasmuch as the shareholders were widely scattered and lived outside the State of Texas. Naturally the fact that the shareholders were scattered placed a greater responsibility upon the Trustee and as your sole representative, and at your solicitations, I considered it my duty to take the stand I have, notwithstanding the cost to me personally. However, I feel that in justice to myself, you should know that taking this stand for the Company and its rights has been done at a tremendous sacrifice to me personally both financially and in business relationships. Pressure that has been brought to bear from every direction has been most trying on our lawyers and myself, and in frankness I will admit that had the cause been less just, I would have at times been disheartened. However, I have every confidence in our Courts and believe they will find in our favor.

In the law firm of Kilgore and Rogers of Wichita Falls, we have had the very best and ablest legal counsel in the State of Texas, and with the recent addition of Mr. Charles Black of Austin, Texas, to assist in presenting our case before the Supreme Court of Texas, know the interests of the Company are receiv-
778 ing the best possible legal representation.

The City National Bank of Wichita Falls, is in liquidation and a reorganized bank of similar name has succeeded it. Our Counsel however advise that insofar as our claims extend we are protected. If we

lose our case, which to me seems neither reasonable nor equitable, of course the bank will take all of the assets of the Company in satisfaction of their claims as they originally set out to do.

The writer has deeply appreciated your letters of confidence and encouragement and I shall be glad to hear from you with any suggestions you may have to offer at any time, for I realize you are interested in and entitled to all information relative to your Company and this lawsuit. However, since the very life of the Company depends upon the favorable outcome in this litigation it has been entirely necessary to concentrate all of our limited resources upon this case and forego every expenditure possible to accomplish this.

Trusting that 1934 will bring to all of us much happiness and prosperity, I am,

Yours very truly,
E. E. SCANNELL,
Trustee.

P. S.—Letters we are receiving indicates there have been many changes of address since our last communication was set out, and we therefore suggest that each of you send in your correct mailing address for verification with our records.

779 The Witness:

During my trusteeship and during Mr. Peckham's trusteeship, we rarely ever had any visits from any of the stockholders—I don't recall ever having any visits until after I became trustee, and such visitor or visitors came after the filing of this suit.

While I was working for Mr. Peckham, I sent out to the stockholders such communications at the direction of Mr. Peckham, and no other information was sent out than as disclosed by those letters, and no other information was communicated to the stockholders, so far as I know. The books and records kept in the office

of the Wichita Royalty Company were not inspected by the stockholders.

Soon after George Peckham died, November 7, or 9, 1929, I begun to get things in shape and saw to our records, the loans at the bank, the cash and everything, to see if it checked out ok. I came to the bank and looked up the liability ledger of the Wichita Royalty Company, which did not correspond with the amount of liability as reflected upon the royalty company's books. I pursued an examination of the respective records to determine wherein the difference lay. I found that the checks reflected upon the books of the royalty company as having been issued to discharge, in part, the Wichita Royalty Company's liability to the bank, had not, in fact, been credited upon that liability. I have those checks, here they are. I will give the number, the date, and the amount of each check; the first check
780 was No. 571, in the amount of $2,000.00, dated January 1, 1927; the next one dated February 19, 1927, No. 579, and the amount of $2,500.00; March 23, 1927, No. 591, $2,000.00; June 18, 1927, No. 620, $1,200.00; August 15, 1927, No. 635, $1,500.00; October 14, 1927, No. 650, $2,400.00; November 25, 1927, No. 657, $1,800.00; April 20, 1928, $1,850.00, No. 710. The above checks were all payable to the bank. The Wichita Royalty Company used the voucher check form. As originally written, it is about twice the width of an average counter check with the voucher attached to the upper half of it, and then perforated about the center, the upper half, the voucher half of it is transmittal, and states what the check is given for, the purpose of it. When originally written those checks were upon the typewriter, underneath there was an office copy retained, I have those copies. The first one is No. 571, in the amount of $2,000.00, made payable to the City National Bank dated January 19, 1927, and was marked "For land improvement to apply on paving excess strip of Marlborough Addition."

When I identify certain checks, by number, date and amount, as having been payable to the plaintiff bank, for a purpose to have been applied upon the liability record of the Wichita Royalty Company, I am testifying from a copy that is before me. I have the original checks and the book entries on them.

I will take off in the order of their occurrence, the date and the payee and the amount of the check, and what the voucher contained when the check was issued;

781 the first check was No. 620, dated June 18, 1927, payable to the City National Bank for $1,200.00 and the duplicate of the voucher stated that it was for notes payable to apply on notes for money borrowed from the City National Bank. That check is perforated paid June 19, 1927. The next one, No. 635, dated August 16, 1927, made payable to the City National Bank for $1,500.00, and the voucher stated that it was for notes payable to apply on note held by City National Bank.

Upon G. W. Peckham's death, I took those checks over to the bank in an effort to reconcile my books with theirs, presented those checks and asked where they were applied. The first check, No. 620, was deposited to the credit of G. W. Peckham on June 18, 1927; I do not think that check was credited upon the Wichita Royalty Company's liability record with the bank. The next check, No. 635, was deposited to the credit of G. W. Peckham, August 16, 1927. The next one, No. 650, dated October 14, 1927, payable to the City National Bank in the amount of $2,400.00, drawn on the City National Bank, the voucher showed that it was notes payable to apply on money borrowed from the City National Bank and was so entered on the books of the Wichita Royalty Company as a credit on notes payable. The next item, deposited to the account of G. W. Peckham, October 15, 1927, perforated paid October 15, 1927. Number 657, dated November 25, 1927, payable to the City National Bank in the amount of $1,800.00, the voucher no-

782 tation shows, interest, expense to interest on note held by the City National Bank. During

the period of time in question the Wichita Royalty Company did not owe any other money to the City National Bank than the City National Bank of Wichita Falls, Texas. This check, No. 657, was deposited to the credit of G. W. Peckham on November 25, 1927. The next check is No. 710, dated April 20, 1928, made payable to the City National Bank in the amount of $1,850.00, perforated paid April 23, 1928, deposited to the credit of G. W. Peckham on November 23, 1928. When I say deposited to the credit of G. W. Peckham, I mean it was deposited in the City National Bank of Wichita Falls, Texas. The next check, No. 752, dated September 27, 1928, made payable to the City National Bank in the amount of $424.66, and canceled on 9-27-28; deposited to the credit of G. W. Peckham on September 27, 1928; the voucher notation showed that it was for interest expense on notes held by the City National Bank. All of those checks that I have now testified about, had the voucher notation indicating its issuance for the purpose of applying upon the Wichita Royalty Company's obligation to the City National Bank.

You now hand me a group of checks issued by the Wichita Royalty Company and each payable to the order of G. W. Peckham, which I will identify by number, and the notation made upon the voucher, etc.; No. 1,217, dated February 5, 1923, for $500.00, issued to G. W. Peckham and deposited to the credit of G. W. Peckham in the City National Bank. The next is No. 1,245, dated March 1, 1923, $500.00, drawn on the Security
783 National Bank, deposited to the credit of G. W. Peckham; the voucher notation on check No. 1,217 was "Salaries, executives, for the month of January, 1923." The voucher notation on No. 1,245, was "Salaries, Executives, month of February." All of these checks that I have testified about have been heretofore identified in the testimony of Mr. Carson, and described in detail. I am now calling the number of each check for identification by reference to other testimony and am giving the voucher notations, as contained in the records

of the Wichita Royalty Company, being a copy of the voucher that was attached to the check itself, the perforated line at the time the check was issued. The next check is No. 1,280, dated March 31, 1923, $500.00, "Executive Salaries for March, 1923." The next check is No. 1,310, dated May 1, 1923, $500.00, "executive salaries for the month of April." The next is No. 1,339, this check has been misplaced—we have it—it is dated June 1, for $500.00, and the voucher reads, "Executive Salaries for the month of May." No. 13, dated July 3, 1923, for $500.00, "Executive Salaries for the month of June, 1924." The next number is 34, August 1, 1923, $500.00, "Executive salaries for the month of July, 1923." The next is No. 54, August 31, 1923, $500.00, "Salaries, Executives, month of August." The next is voucher No. 73, dated September 30, 1923, $500.00, "Executive to October 1, 1923." No. 92, October 31, 1923, $500.00, "Salaries, executives October salary." The words "October Salary" is written in pencil, but not on
784 the voucher. That looks like my handwriting.

The next is voucher No. 134, dated December 19, 1923, $500.00, and the voucher reads "Salaries, Executives," and a pencil notation, "November," the pencil notation was not in the voucher, it was probably when checking the books and posting the book it was not on there, it was written on there. The next is voucher No. 149, dated January 30, 1924, $500.00, "To executive salaries for January, 1924." Next No. 171 March 1, 1924, $500.00, "Salaries, Executives month of February." Next is voucher No. 188, March 31, 1924, $500.00, "Executive salaries, March, 1924." Next is voucher No. 205, April 30, 1924, $500.00, "Executive salaries, April, 1924." I will continue on by numbers; voucher No. 232, June 28, 1924, "Salaries Executives for June." Voucher No. 247, July 30, 1924, $500.00, "Executive Salaries for the month of July, 1924." No. 272, dated September 30, 1924, $500.00, "Salaries, Executives, for September, 1924." Voucher No. 286, October 31, 1924, $500.00, "Salaries. Executives, for the month of October, 1924." No. 304,

November 29, 1924, $500.00, "Salaries, Executives for November, 1924." Voucher No. 320, December 31, 1924, $500.00, "Salaries Executives for December." No. 338, February 24, 1925, $400.00, "Salaries Executives January, 1925." Voucher No. 347, February 25, 1925, $400.00, "Salaries, Executives, February, 1925." Voucher No. 357, March 31, 1925, $400.00, "Executive salaries, March, 1925." Voucher No. 370, April 30, 1925, $400.00. "Executive salaries for April, 1925." Voucher No. 378,
785 May 25, 1925, $400.00, "Executive salaries for month of May, 1925." Voucher No. 388, June 30, 1925, $400.00, "Executive salaries for June, 1925." Voucher No. 400, July 31, 1925, $400.00, "Salaries executives for month of July, 1925." No. 411, August 31, 1925, $400.00, "Salaries, Executives, for the month of August, 1925." Voucher No. 422, September 30, 1925, $400.00, salaries executives for September, 1925." No. 433, October 31, 1925, $400.00, "Salaries Executives for the month of October, 1925." No. 444, December 1, 1925, $400.00, "Salaries Executives for the month of November, 1925." No. 453, December 31, 1925, $400.00, "Salaries Executive for the month of December, 1925." No. 466, January 30, 1926, $400.00, "Executive Salaries for January, 1926." No. 477, February 27, 1926, $400.00, "Salaries Executive for the month of February, 1926." No. 489, April 1, 1926, $400.00, "Salaries Executives for the month of March, 1926." No. 497, May 3, 1926, $400.00, "Salaries Executive for the month of April, 1926." No. 505, May 30, 1926, $400.00, "Executive Salaries, Salary of Trustee for May, 1926." No. 512, June 30, 1926, $400.00, "To executive salaries for month of June, 1926." No. 523, July 31, 1926, $400.00, "Executive Salaries, salary for month of July, 1926." No. 537, September 30, 1926, $400.00, "Executive Salaries, to salaries for month of September, 1926." No. 545, October 30, 1926, $400.00, "Executive salaries for the month of October, 1926." No. 552, November 30, 1926, $400.00, "Executive Salaries for the month of November." No. 554, December 31,
786 1926, $400.00, Salaries Executive for the month of December, 1926."

No. 574, January 31, 1927, $400.00, "Executive Salaries for the month of January, 1927." No. 581, February 28, 1927, $400.00, "Executive salaries for the month of February, 1927." No. 594, March 31, 1927, $400.00, "Salaries Executives for the month of March, 1927." No. 604, April 30, 1927, $400.00, "Salaries executives for the month of April, 1927." No. 614, May 31, 1927, $400.00 "Salaries executives for the month of May, 1927." No. 623, June 30, $400.00, "Salaries executives for the month of June, 1927." No. 630, July 31, 1927, $400.00, "Executive salaries the month of July, 1927." No. 637, September 3, 1927, $400.00, "Salaries executive for the month of September, 1927." No. 653, November 1, 1927, $400.00, "salaries executive for the month of October, 1927." No. 659, November 30, 1927, $400.00, Salaries Executive for the month of November, 1927." No. 672, December 27, 1927, $400.00, "Salaries executives for the month of December, 1927." No. 684, January 31, 1928, $400.00, "Salaries executives for the month of January, 1928." No. 692, February 29, 1928, $400.00, "Salaries executives for the month of February, 1928." Voucher No. 701, March 31, 1928, $400.00, "Salaries Executives for the month of March, 1928." No. 713, April 30, 1928, $400.00 "Salaries executives for the month of April, 1928." No. 720, May 31, 1928, $400.00, "salaries executives for the month of May, 1928." No. 727, July 2, 1928, $400.00, "salaries executives for the month of June, 1928." No. 738, July 31, 1928, $400.00 "Executive salaries for the month of July, 1928." No. 747, August 31, 1928, $400.00, "salaries executives for the month of August, 1928." No. 754, October 1, 1928, $400.00, "Salaries executive for the month of September, 1928." No. 762, October 31, 1928, $400.00, "Salaries executives for the month of October, 1928." No. 767, November 30, 1928, $400.00, "Salaries executives for the month of November, 1928." No. 775, December 31, 1928, $400.00, "Salaries executives for the month of December, 1928." No. 785, January 30, 1929, $400.00, "Executive salaries for the month of January, 1929."

787

No. 792, March 1, 1929, $400.00, "Salaries Executives for the month of February, 1929." No. 797, March 26, 1929, $400.00, "Salaries executives for the month of March, 1929." No. 806, April 30, 1929, $400.00, "Salaries Executives for the month of April, 1929." No. 813, May 31, 1929, $400.00, "Salaries executives for the month of May, 1929." No. 829, July 31, 1929, $400.00, "Salaries executives for the month of July, 1929." After No. 813 should be 821, dated July 1, 1929, for $400.00, "Salaries executives for the month of June, 1929." That is payable to G. W. Peckham and drawn on the City National Bank. Independently of the voucher, that original check was drawn on the City National Bank and deposited to G. W. Peckham's account with the bank. The next is No. 829, July 31, 1929, $400.00, "Salaries Executives for the month of July, 1929." No. 837,

August 30, 1929, $400.00, "Executive salaries in

788 payment for August, 1929." No. 843, September 30, 1929, $400.00, "Salaries executive for the month of September, 1929." No. 852, October 31, 1929, $400.00, "Salaries executives for the month of October, 1929." Those are the only salary checks I find payable to G. W. Peckham. I believe I missed No. 115, "Salaries executive for the month of February, 1923," $500.00, payable to G. W. Peckham, on the City National Bank. The last check was cashed rather than deposited—that constitutes all the salary checks I find. No part of the proceeds of those checks were ever refunded to the royalty company or paid by G. W. Peckham to it.

I have my voucher book, wherein voucher No. 478 is reflected, it is dated March 6, 1926; I have the voucher and the carbon of the original check in the bound volume before me. As a matter of fact, all of the vouchers and all of the checks that have been drawn are in permanent form bound by period, and form a part of the permanent records of the Royalty Company. The books is composed of pieces of paper twice the size of the checks of the Royalty Company. On the bottom of each such

office copy and voucher is a carbon copy of that which is written on typewriter on the check, as issued, as a rule the voucher notation would be written upon the top part of the voucher check when released. The voucher before me, No. 478, the voucher notation is part carbon and partly original typewriting. The carbon on the original voucher is the amount of money involved in the voucher and the copied part
789 of the check itself is the date, March 6, 1926, Voucher No. 478, the payee, City National Bank, and the amount of money, $17,623.70. The remaining portion of the voucher notation is in original typewriting. In my opinion the reason a portion of this is in original typing and the other portion is in typing, is that George Peckham, he probably called me over the telephone and told me to bring him a check for this amount of money, and told me to bring it over there, and he would give me what to write on it—that is probably the reason for it, and is my explanation. It is my recollection that after the form of the check was filled out, the payee and the amount, and signed thereafter, Mr. Peckham gave me instructions as to what to put on the voucher to show the purpose of issuance of the check. Later, that is, later than his request, he presented to me a deed signed by him, and asked me to acknowledge it, on April 10, 1926. That is the deed in respect to the Marlborough Addition and he told me to take it to the office and put it in the safe and keep it and not let anybody see it. He told me not to record it. I never showed that deed to anybody until this lawsuit was filed. That which was written in the original typewriting upon the voucher of check No. 478, as kept in the office, as disclosed by the voucher of record, which I have before me, is "Real Estate, City Property." Underlined, and then it reads, "To apply on purchase of one-half undivided interest in Marlborough Addition, consisting of 252 lots, to the City of Wichita Falls, Texas, total consideration of $49,-
790 566.20. This check No. 478, for $17,623.70, and check No. 479, of this date, for $6,000.00, repre-

sents the total cash consideration. For the balance of the consideration our interest is subject to $23,215.50, due in one, two and three years from September 19, 1925, and $2,727.00 due in one, two and three years from January 8, 1927. This indebtedness being secured by twelve vendor lien notes against the property which draws eight percent per annum, payable to the Highland Irrigation Company. See Journal entries Nos. 27 and 28, March 6, 1926." The proceeds of this $17,623.17 check was made to the City National Bank and deposited to the account of G. W. Peckham in the City National Bank. On the same day, March 6, 1926, Mr. Peckham requested me, for him as trustee, to issue check No. 479, for $6,000.00. That check was payable to the order of the Security National Bank, I don't know to whose credit it was deposited in that bank, it is drawn to the order of the Security National Bank on the City National Bank. I can check my records and tell you tomorrow whether or not that check was deposited to G. W. Peckham's account with the Security National Bank.

On voucher record No. 479, is the description, the purpose for which the check was issued, likewise the original typewriting. That original typewriting says, "Real Estate, City property. To apply on purchase of one-half undivided interest in Marlborough Addition, consisting of 252 lots, to the City of Wichita Falls, Texas. Total consideration is $49,566.20. This check No. 479,
791 for $6,000.00, and check No. 478 for $17,623.70 represents the total cash consideration. For the balance of the consideration our interest is subject to $22,216.50, due in one, two and three years from September 19, 1925, and $2,727.00 due in one, two and three years from January 8, 1927. This indebtedness being secured by twelve vendor lien notes against the property which draw eight percent interest per annum and are payable to the Highland Irrigation Company. See journal entries Nos. 27 and 28, March 6, 1926."

I will take up the remaining Marlborough checks, and by number identify them with the voucher notation, and

tell whether or not the quoted part of the voucher showing its purpose, to be the original or in carbon or typewritten; voucher No. 485, dated March 31, 1926, drawn on the City National Bank in the amount of $7,500.00; the amount of money on the upper one-half of the voucher, and on all of the vouchers seems to be in carbon. But the descriptive matter seems to be in original typewriting, and this says, "Real Estate Improvement to apply on our half interest in improving Marlborough Addition, Wichita Falls, Texas." "Improvement consisting of water, lights, gas, sewerage and grading and paving streets." Voucher No. 503, dated May 20, 1926, to G. W. Peckham for $3,000.00, reads, "To improvements on Marlborough Addition." On the upper half of the voucher, carbon copy. Voucher No. 507, May 29, 1926, made to the order of City National Bank for $1,500.00, and reads, on the upper half, "Marlborough Addition, to apply on our portion of improvements." The carbon on that, No. 510,
702 dated June 16, 1926, pay to the order of City National Bank, $4,500.00, the upper half of the voucher reads, "To apply on improvements of Marlborough Addition in our proportion," and the office voucher is all carbon. No. 519, July 13, 1926, pay to the order of City National Bank, $1,000.00, on the upper half of the voucher it reads, "To apply on improvements of Marlborough Addition, our proportion." It is all carbon, on the office copy. Voucher No. 525, dated August 2, 1926, for $4,000.00 payable to the order of the City National Bank, the lower half of the office copy of the voucher is in carbon, and the upper half seems to be the original, and reads, "Notes payable to apply on notes due 9-19-26, to Highland Irrigation Company, for land in fee." I probably either got that information when I took the check from him, or sometime later, I couldn't tell you which. Part of the time my office was in the same building with Mr. Peckham, most of the time it was over in the Staley Building, and his office here. We never did have an office right with him. George Peckham conducted an independent brokerage business in

leases, not only brokerage, but investments, himself. The next is voucher No. 532, August 27, 1926, Pay to the order of City National Bank, $4,357.68, the lower half of the voucher is office voucher, carbon, and the upper half is the original typing and it reads, "Notes payable to apply on note due 9-19-26, to Highland Irrigation Company for land in fee, $3,738.50." The next item, "Interest expense on above note, eight percent for one year,
793 $619.08, total $4,357.58." No. 556, dated December 22, 1926, pay to the order of G. W. Peckham, $700.00; the office voucher is all carbon and the upper half reads, "Interest expense to apply on two notes of $7,738.50, at the rate of eight percent per annum. This interest applying to the period 9-10-25, to 9-19-26, Highland Irrigation Company notes." No. 556-a, dated December 22, 1926, pay to the order of G. W. Peckham, $536.16; office copy of the voucher is of carbon and the other half reads, "Interest expense to apply on two notes of $7,738.50, at the rate of eight percent per annum, this interest applying on period 9-19-25, to 9-19-26; Highland Irrigation Company note for balance of interest paid see check No. 556." I will state that I actually typed most of the notations if not all of them, and I got that information from Mr. Peckham, he instructed me to make those notations. That applies not alone to these checks, but to all checks that I may testify to in this hearing; in other words, I kept these books under Mr. Peckham's care and supervision, and at his direction. I kept the books like Mr. Peckham told me to keep them. Mr. Peckham was not a bookkeeper. The next one is No. 571, January 19, 1927, pay to the order of City National Bank, $2,000.00; the office copy of the voucher is all in carbon and the upper half reads "Land improvements to apply on paving excess strip Marlborough Addition." Voucher No. 579, February 19, 1927, City National Bank, $2,500.00; the August copy is all in carbon and the upper half reads,
"land in fee to pay on paving strip, Marlborough
794 Addition." The next one is No. 880, dated January 24, 1930, pay to the order of Marlborough

Addition, $1,500.00; the office copy of the voucher is all in carbon and the upper half of it reads, "Notes receivable, Texas Investment Company, to loans Texas Investment Company, in which Wichita Royalty Company owns half of the capital stock for one year, at interest at eight percent, money to be used for current obligations, etc., on Marlborough Addition, Wichita Falls, Texas." That was after I became trustee, and showed that it was a loan by me to the Texas Invstment Company. The next is No. 908, May 13, 1930, pay to the order of Texas Investment Company, Wichita Falls, $500.00; the voucher is all in carbon and reads in the upper half, "Interest on Marlborough Note, $500.00." And then says, a bookkeeper's notation which reads, "Notes receivable, Texas Investment Company of Wichita Falls, Texas." That likewise, is dated after George Peckham's death.

The aggregate total of those checks, with the voucher notation shows the Marlborough transactions concerning which I testified yesterday afternoon, are approximately $57,219.44.

After I became trustee, and after the death of Mr. Peckham, I arrived at an amount of a little over nineteen thousand dollars that would balance the records, as I understood them to be, between the trust and Mr. Peckham, with respect to the transactions. I employed Mr. Davenport to prepare an application embodying those figures to be presented, and presented them to the administrator of the estate of G. W. Peckham.

795 When it was determined there was a shortage in Mr. Peckham's account with the royalty company I took it up with Bill Peckham and we talked it over, and George was a good personal friend of mine, my employer, and I thought a lot of him and we agreed that it would be to the best interest of his family, and that it would not hurt the trust to keep it quiet for a little while, until they could get their insurance matters adjusted. I knew that Mr. Peckham had quite a bit of stuff, had over $100,000.00 life insurance, and Bill could very easily adjust that without sacrifice to anyone,

and we agreed between us it would be done, in order to keep the stockholders from coming in and raising any disturbance until it was settled. The insurance was payable to Mrs. Peckham, and not to his estate.

I have before me a copy of the $19,000.00 items; the items are checks that were supposed to have been applied to our account, I mean the Wichita Royalty Company liability account at the City National Bank, and we later, we determined through checking up, that the checks were deposited to Peckham's personal account and some of them had never been credited to the liability account at all. We checked that with the bank's record, got a copy of our liability sheet and checked it back against the books, and applied, as against those charges, certain payments that G. W. Peckham had paid from his personal account upon the liability record of the Wichita Royalty Company, we gave credit for all deposits. Then we set up on our books those items so that our books would correspond with the books of the bank.

796

Other items entered into that account, the sale of two properties, one to the Mineral Spirits Company and one to the Petroleum Royalties Corporation. Our records showed that that was accounts receivable; the trustee had conveyed those properties to those companies. $5,700.00 is what our books showed that we got for each property. We had not received it, the first entry on it was accounts receivable. Later George Peckham instructed us to apply it against the accounts of the City National Bank, against the liability, payment on notes; but it had not, in fact, been so applied as payment on such notes, nor had it been deposited to the account of the Royalty Company. One of those items is the transaction concerning which the escrow file has heretofore been introduced, with payments made under it, totaling $6,048.00; the other is the cashier's check of the Wichita State Bank and Trust Company which was deposited to G. W. Peckham's account in the City National Bank and heretofore identified in evidence. The total amount of payments that we had made to the liability account,

that were accounted for, was for $26,650.00. We found that George Peckham had made credits of four items, totaling $6,821.33, which left the balance of $19,828.57, that we filed in our claim. I did not tell Mr. Davenport any of the other facts, except as I have disclosed. That statement was prepared and filed with the administrator at a time when I had, and the administrator had, the agreement that I have heretofore testi-
797 fied to concerning keeping the matter quiet and not disclosing it. We carried it along, three or four or probably five months, it seems to me it was around May before I made any disclosure to anyone in regard to it or talked to anyone about it—just kept it quiet. During that time I was present at meetings of the stockholders and directors of the Texas Investment Company, I remember Mr. Humphrey was at some of those meetings, Mr. Harrell and Mr. Will Gray.

This deed to an interest in Mr. Peckham's original purchase of the property known as the Marlborough property was not recorded at that time, nor was it ever exhibited to any stockholder of the Wichita Royalty Company. It has never been recorded to my knowledge.

Certain properties on the records of the Wichita Royalty Company, are for certain numbers. The Grimshaw is known as No. 71, G. W. Peckham did acquire an interest in the Dowdy Survey, of a quarter of the minerals, February 12, 1923, and the deed to him is recorded in Volume 991, page 544 of the deed records of Young County. He paid $8,000.00 for that quarter mineral interest. There was some activity down there in the area of the Grimshaw. I have dealt in and observed the purchase and sale of oil and gas properties for some fifteen or more years, and I know that the price of oil properties adjacent to activities are of a fluctuating value. Mr. Peckham executed a deed to the quarter interest in the minerals that he obtained, I have the deed here.

798 Mr. Rogers:

We offer the deed in evidence.

(Marked "Defendant's Exhibit 35" as follows:)

DEFENDANT'S EXHIBIT 35.

Mineral deed. From A. Grimshaw and wife, Zora Grimshaw, to G. W. Peckham, conveying an undivided 4/160ths interest in all of the oil and gas and other minerals in and under or that may be produced from the following described land situated in Young County, Texas, to-wit:

All of B. R. I. R. No. 39, J. E. Dowdle Survey, Abstract No. 2,215, containing 160 acres of land.

Dated February 12, 1923. Revenue stamps $8.00.

Duly acknowledged by A. Grimshaw and wife, before A. C. Martin, notary public, in and for Comanche County, Texas, February 12, 1923.

Filed for record May 16, 1923, recorded, Vol. 99, page 545, Deed Records, Young County, Texas.

Mr. Rogers:

We offer in evidence the deed from George Peckham to the Wichita Royalty Company.

(Marked "Defendant's Exhibit 36.")

DEFENDANT'S EXHIBIT 36.

Deed from George W. Peckham to Wichita Royalty Company. Consideration $10.00 and other valuable consideration, cash in hand paid by Wichita Royalty Company. Conveying 3/16ths interest in and to all of the oil and gas and other minerals in and under, or that may

be produced from the following described land
739 situated in Young County, Texas.

All of B. R. I. R. No. 39, J. E. Dowdle Survey, Abstract No. 2215, containing 160 acres of land.

Dated March 12, 1923.

Duly acknowledged by G. W. Peckham, before E. A. Deaton, Notary Public in and for Wichita County, Texas, on May 18, 1923.

Documentary stamps, $7.50.

Filed for record 18th day of May, 1923, at 10:45 o'clock A. M., and recorded May 23, 1923, at 10:40 o'clock A. M., in the deed records of Young County, Texas.

The Witness:
Mr. Peckham transferred the remaining part of the interest that he acquired from Grimshaw, to F. O. Harrell, for the Perpetual Royalty Syndicate, for which F. O. Harrell paid $2,500.00.

Mr. Rogers:
We offer the instrument in evidence.

(Marked "Defendant's Exhibit 37" as follows:)

DEFENDANT'S EXHIBIT 37.

G. W. Peckham to F. O. Harrell, consideration $10.00 and other valuable consideration. Conveying 1/16 interest in and to all of the oil, gas and other minerals in

and under and that may be produced from the following described land situated in Young County, Texas, to-wit:

All of B. R. I. R. No. 39, J. E. Dowdle Survey.

Abstract No. 2215, containing 160 acres of land.

Together with the right of ingress and egress at all times for the purpose of mining, drilling and
800 exploring said land for oil, gas and other minerals, and removing the same therefrom.

Dated May 12, 1923.

Duly acknowledged by G. W. Peckham before Mrs. Fannie Brewster, Notary Public in and for Wichita County, Texas.

Filed for record May 24, 1923, at 9:00 o'clock A. M. Recorded May 24th day of May, 1923, at 9:00 o'clock A. M. in the deed records of said county, in volume 99, on pages 587.

The Witness:

J. T. Harrell and F. O. Harrell are not related to each other.

The checks of Wichita Royalty Company, issued in payment of this conveyance from G. W. Peckham as an individual to his trust, are No. 1,252, dated March 10, 1923, for $2,500.00, payable to the order of the City National Bank; next No. 1,291, April 9, 1923, paid to the order of G. W. Peckham, $2,516.67; No. 1,325, May 11, George W. Peckham, pay to the order of George W. Peckham, $2,533.00; those are voucher checks that I refer to, rather than voucher notations.

That voucher record shows that the check was issued to apply on last payment of royalty No. 71, 3/128ths total production, 168 acres, Grimshaw farm, Young County, Texas, $2,500.00. Check dated March 10, 1923, No. 1,253, payable to the order of City National Bank, $2,500.00. I do not know why the drawee bank gave B. L. Fain credit for that item, rather than applying it to
801 some other purpose. I do not know whether B. L. Fain had an interest in that property or to its sale or not. The notation that is placed upon the voucher is placed there at the direction of George Peckham.

The voucher notation on the next check, No. 1,291, payable to G. W. Peckham, in the amount of $2,516.67, voucher records show, to apply on last payment of Royalty No. 71, Grimshaw tract, Young County, Texas, payment of $2,500.00, interest $16.67. In order that I will not have to repeat, I will state that the voucher notation as contained in my permanent books were placed there by me under the instructions and directions of G. W. Peckham, trustee. Check No. 1,325, dated May 11, 1923, pay to the order of George W. Peckham for $2,533.33, voucher shown to apply on last payment of royalty No. 71, Grimshaw tract, Young County, Texas, $2,500.00; interest $33.33, total $2,533.33. The total that was paid to Mr. Peckham for that fractional interest to that which he had acquired from Mr. Grimshaw, plus interest, was $7,500.00. That property has produced minerals and the proceeds of their sale has been deposited to the account of and received by Wichita Royalty Company. I have a condensed statement of the oil runs and the amount received from them. I now have before me the original production records of the Wichita Royalty Company, which records have been heretofore made voluntarily available to the other parties in this law suit. The condensed statement is taken off of the oil runs from what is known as Grimshaw No. 71.

802 Mr. Rogers:

We offer the statement in evidence, in lieu of the books themselves.

(Marked "Defendant's Exhibit 38," as follows:)

803 DEFENDANTS' EXHIBIT 38.

"Royalty No. 71—Grimshaw.

Sale of Oil and Gas.

Period From	Period To		Amount
3-12-23	3-31-23	Check of G. W. Peckham dated 5-16-23	234.6
4- 1-23	4-30-23	Check of G. W. Peckham dated 5-28-23	302.9
5- 1-23	5-31-23	Sale of oil. No gas.....	295.4
4- 1-23	4-30-23	" "	95.0
5- 1-23	5-31-23	" "	71.6
6- 1-23	5-31-24	" "	2,145.1
"	"	Sale of gas	63.8
6- 1-24	5-31-25	Sale of oil. No gas. Chaney-Humble	607.7
6- 1-24	5-31-25	Sale of oil. Gulf.....	327.4
"	"	Sale of gas. "	15.0
6- 1-24	5-31-25	Sale of oil. Humble Cosden	451.8
6- 1-24	"	Sale of Gas	3.7
6- 1-25	5-31-26	Sale of Oil. Gulf.....	432.4
"	"	Sale of Gas	15.0
6- 1-25	5-31-26	Sale of Oil. Humble Chaney	325.8
"	"	Sale of Gas	11.2
6- 1-25	5-31-26	Sale of Oil. Humble Cosden	380.8
"	"	Sale of Gas	3.74
6- 1-26	5-31-27	Sale of Oil. Gulf.....	318.50
6- 1-26	"	Sale of Gas	11.28
6- 1-26	5-31-27	Sale of Oil. No Gas. Humble-Chaney	262.03
6- 1-26	5-31-27	Sale of Oil. Prairie-Mid Con.	240.86
6- 1-26	5-31-27	Sale of Gas	3.74
6- 1-27	5-31-28	Sale of Oil. Gulf	140.59
"	"	Sale of Gas	11.28

Vol. II

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1938

No. 314

WICHITA ROYALTY COMPANY ET AL.,
PETITIONERS,

vs.

CITY NATIONAL BANK OF WICHITA FALLS ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED AUGUST 30, 1938.

CERTIORARI GRANTED OCTOBER 17, 1938.

Period From	To		Amount
6- 1-27	5-31-28	Sale of Oil. No Gas. Humble-Chaney	162.90
6- 1-27	5-31-28	Sale of Oil. Prairie-Mid Con.	125.68
"	"	.....	3.74
6- 1-28	3-31-29	Sale of Oil. No. Gas. Gulf (Written in red): ("This lease abandoned")	72.26
6- 1-28	5-31-29	Sale of Oil. No Gas. Humble Chaney	104.74
6- 1-28	5-31-29	Sale of Oil. Prairie Mid Con.	115.30
"	"	Sale of Gas	3.74
6- 1-29	7-31-29	Sale of Oil. No Gas. Humble Chaney (Written in red): ("Lease abandoned here")	4.15
6- 1-29	5-31-30	Sale of oil. Prairie Mid Con.	185.91
"	"	Sale of Gas	3.74
6- 1-30	5-31-32	Sale of Oil. Prairie Mid Cont.	251.—
"	"	Sale of Gas	7.48
6- 1-32	8-31-34	Sale of Oil. Prairie Mid Cont.	371.46
"	"	Sale of Gas	3.74
9- 1-34	9-30-36	Sale of Oil. No Gas. Prairie Mid Cont.	403.80
		Total to Date	8,591.76

Repudiated."

805 The Witness:

That payment of $403.80 covered the period of time from 9-1-31, to 9-3-36. The proceeds accruing to that lease were tied up during that period and released at that time; I did not receive statements from the producing oil companies during that period showing the amounts accruing to them in suspense, we could ascertain that any time we wanted to. I believe the Bunger pool came in 1921 or 1922. I am generally familiar with the gradual decline of an oil well after it reaches a settled

production. During that two year period covered by that last item, there would be a sort of a gradual lessening of production and receipt from it. I think there were originally four leases, forty acre leases in the Grimshaw. We made a notation on this, that in 1929 the Gulf's lease on the Bunger was abandoned and in 1929 also the Humble's lease was abandoned.

I first learned that part of the interest acquired by G. W. Peckham as an individual, had been conveyed to F. O. Harrell some time this year, I don't recall just when I begun to dig into it, before the pleading in this case, I think we went down to Young County along in May. At the time of the filing of this cross action, I considered it to the best interest of the trust to convey this interest, upon being repaid the amount that the trust company paid G. W. Peckham, and interest thereon, after crediting such amount so determined, with such oil runs as have been received by the company. I now offer to reconvey that item and tender it into Court, and reconvey it to whomsoever the Court might say.

806 The mineral deed from G. W. Peckham to Wichita Royalty Company, dated April 24, 1924, and conveying 1/64th interest in lots 13, 14 and 27, of the American Tribune New Colony Company subdivision is known as property No. 75, in the records of the Royalty Company.

Mr. Rogers:

We offer it in evidence.

(Marked "Defendant's Exhibit 39" as follows:)

DEFENDANT'S EXHIBIT 39.

G. W. Peckham to Wichita Royalty Company.

Consideration $1.00 and other valuable considerations.

Conveying an undivided 1/64th interest in and to all of the oil, gas and other mineral in and under and that

may be produced from the following described land situated in Archer County, Texas, to-wit:

Being lots Nos. 13 and 14, in block 27, of the American Tribune New Colony Company's subdivision, as shown by the map or plat of record in the Deed Records of Archer County, Texas.

Documentary stamps, $21.30.

Dated April 22, 1924.

Duly acknowledged by G. W. Peckham before E. E. Scannell, notary public in and for Wichita County, Texas, April 22, 1924.

Filed for record April 25, 1924, at 8:00 o'clock A. M. by the county clerk of Archer County, Texas.

807 The Witness:

I have the checks that were issued in payment of that, and I have the voucher records behind each voucher check; the first check, voucher check is No. 154, dated February 2, 1924. Pay to the order of B. L. Fain for $12,000.00, and the voucher record shows that it was given to the purchase of a royalty interest in the Tonkawa and Creek Counties, Oklahoma, $12,000.00. There is a notation that the money was not applied—we did not receive—that the money was not applied to the purchase of the Oklahoma property, but it says, "See letter from G. W. Peckham to Wichita Royalty Company, dated March 17, 1924. This money to apply on Wilson Royalty instead of above." That last phrase was written subsequent to the original writing of the voucher and the voucher notation, under the instruction and direction of G. W. Peckham. That notation was made shortly after the voucher was issued. We never got any of those Oklahoma properties that Mr. Peckham first told me to charge the check against. I imagine it was a few days later that Mr. Peckham told me to enter that as a payment on this particular royalty No. 75. The number of the check is 154, payable to B. L. Fain, deposited to the credit of G. W. Peckham on the 30th day of February, and the

City National Bank. The notation refers to a letter signed by Mr. G. W. Peckham, I think I have it, I will undertake to get it and present it.

The next check is No. 185, dated March 17, 1924, payable to the order of G. W. Peckham for $9,250.00. Voucher notation shows to cover difference in purchase
808 price of Tonkawa-Deer Royalties, check No. 164, purchase price $27,500.00 for 1/8th royalty on Wilson 80 acres, block 27, Ray, Massie, Featherstone, Mayer, Staniforth leases; total cash payment $21,250.00. To be paid from oil, $6,250.00. Those were the two checks issued. The $6,250.00 was paid out of oil. I will explain that this way; the total purchase price of the interest was $27,500.00 and there was a certain amount of it, $6,250.00, that would accrue each month in oil runs, and when that $6,250.00 was accrued, then we would get all the money that the lease made, as far as our interest appeared, until $6,250.00 was paid, that much was held up. I presume it was paid to George Peckham, as I understand, when this Wilson lease was bought they paid so much cash for it and so much out of oil and when Peckhams resold it they resold it the same way. They divided the total 1/8 interest that they bought, and they held that oil payment and it just went on back to the Wilson estate until that amount was paid, whatever it was, and the proportion of our interest was $6,250.00. The Royalty Company does not still own this property, it was sold to the Petroleum Oil Corporation November 25, 1927, for $5,700.00. That property was sold under an escrow contract deposited with the plaintiff bank and which has heretofore been identified in evidence.

During the last few months I have examined carefully the books and records of the Wichita Royalty Company and photostatic copies and other copies fur-
809 nished me by the plaintiff bank, of the respective accounts of the various parties to the suit, and all checks and bank statements of G. W. Peckham—I have attempted to find out everything I could about it. The records do reflect the payment of certain items, and the purchase price of this particular royalty No. 75; our

information is that on December 5, 1927, G. W. Peckham received $2,400.00 from the escrow account and that this money was deposited to the account of G. W. Peckham on December 5, 1927; on January 9, 1928, G. W. Peckham received $1,200.00 from the escrow account and the same was deposited to the account of G. W. Peckham received $1,200.00 from the escrow account and the same was deposited to the account of G. W. Peckham on January 9, 1928; on January 25, 1928, G. W. Peckham received $1,224.00 from the escrow account, being $1,200.00 principal and $24.00 interest, and same was deposited to the account of G. W. Peckham on January 25, 1928. On February 29, 1928, G. W. Peckham received $1,224.00 from the escrow account, being $1,200.00 principal and $24.00 interest, and the same was deposited to George Peckham's account on February 29, 1928. No part of the proceeds of that sale was deposited to the account of Wichita Royalty Company. I have here the book entry I made under the direction of Mr. Peckham, with respect to that sale; the journal, as to it, the entry with the $6,250.00 payment out of oil, shows the total consideration of $27,500.00, which was the cost of the property, journal entry No. 17, dated March 31, 1924, reading,
810 "Producing royalties owned, No. 75, $6,250.00 on the debits, and notes payable royalty $6,250.00 credit." And the explanation, "The above amount represents the money to be paid out of oil runs of the Luke-Wilson royalties, covers Blocks 13 and 14, Section 27, A. T. N. C. lands, Archer County, Texas; the full purchase price of this royalty, 1/8th of 1/8th fee, was $27,500.00, of which $21,250.00 cash was paid. The check No. 154, $12,000.00 and 185, for $9,250.00. And the ledger entry, February 2, 1924, No. 75, folio 154, referring to the voucher number of the check, $12,000.00; March 17, No. 75, check No. 185, $9,250.00; March 31, No. 75, journal entry No. 17, $6,250.00—total $27,500.00. I have before me the original ledger reflecting the ledger entry of the sale of property No. 75. I have tried to find the original journal entry behind that ledger entry and have not been able

to find it, I think I can produce it. The books and records of the Wichita Royalty Company have been moved several times. The ledger shows we made journal entry No. 24, May 1, 1928, $5,700.00, debit and two notes receivable. I will read the entry on the ledger, under notes receivable, May 1, 1928, on the debit side, for J. F. Wilson royalty, interest J. E. 24, of $5,700.00. That property had been sold in November the year before, and I had not been instructed theretofore to make book entry on it. The item of $5,700.00 under notes receivable for the sale of property No. 57, was made, along with another, at the end of the year, May 31, 1928, J. E. 35, $11,400.00 on the credit side. The other $5,700.00 item entered May
811 1, 1928, for Hattie Vaughan, Royalty Interest J. E. 25, $5,700.00, total $11,400.00. That Hattie Vaughan Royalty was the one that was sold in payment of cashier's check of $6,000.00 and was issued and deposited to the account of G. W. Peckham as heretofore identified in the testimony. The $11,400.00 item, I was instructed by George Peckham at the close of that year, to charge those two interests to notes payable account at the City National Bank, and did so charge them. On June 1, Journal entry No. 18, $11,400.00, notes payable account City National Bank. That journal entry is likewise in the book that I will undertake to produce.

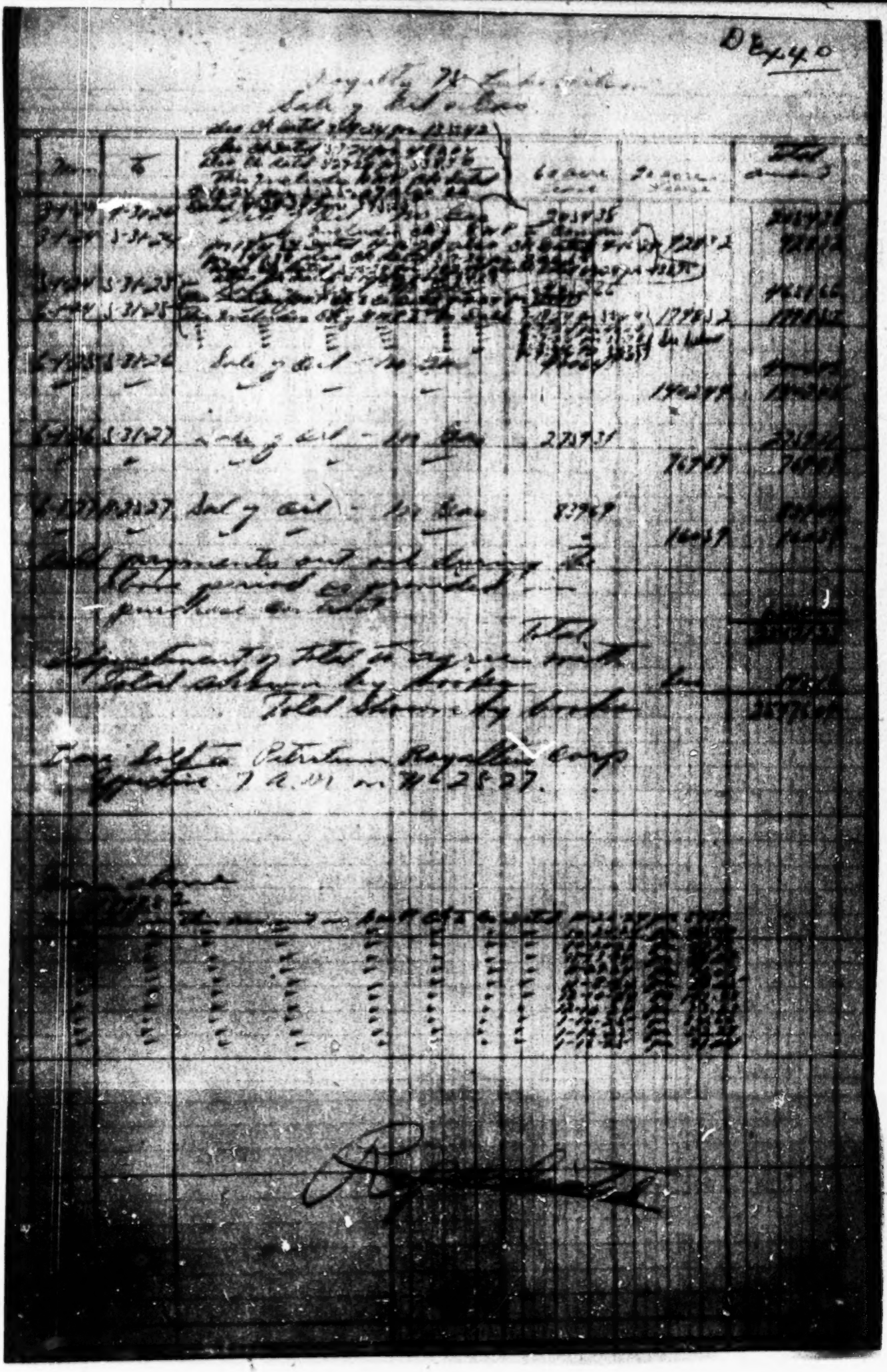
I have likewise examined the liability record of the Wichita Royalty Company with the City National Bank as of that time and on that date, and the Wichita Royalty Company was not given credit upon its liability records to the bank.

I have the production records before me, and the matter which is now offered in evidence is a condensed statement of the proceeds accruing from that royalty No. 75, and received by the Wichita Royalty Company at the time, and in the amount therein shown.

Mr. Rogers:

We offer it in evidence.

(Marked "Defendant's Exhibit No. 40" as follows:)



813 The Witness:

The exhibit 40, totals $25,476.04, and is the royalty that there was an oil payment due on, it includes the oil payment; it figures into the $6,250.00 that is figured in the $25,000.00. I don't know just exactly what it will total, but the $25,476.04 includes $6,250.00 of oil payments; therefore the royalty company actually got $6,250.00 less than that figure shows, into its treasury, approximately $19,000.00.

When this litigation originally arose in 1930, or 1931, and the cross action was filed, the royalty company no longer owned that property and had no property on hand to tender back. I now consider it is to the best interest of the stockholders of the trust whom I represent, to repudiate that transaction, and thus, in an accounting as against those liable therefor, that the trust be repaid the original amount that has been expended upon it, with interest thereon, and credited, of course, with the proceeds from the sale of the oil which I have received from the property. I make such offer and tender now.

I have here before me the books and records and papers of the Wichita Royalty Company, in respect to property No. 76. I do not have the deed. It was acquired from G. W. Peckham. It was a leasehold estate under an oil and gas lease. Our books and records do not reflect that we ever got legal title to that property. It is my recollection that Mr. Peckham, either in his own name, or that of another, had title to that property, and the royalty company received some oil runs accruing to it. With

814 respect to the oil companies paying off its purchase, as to the checks that were issued, check No. 237, July 2, 1924, for $11,000.00. The original voucher record shows a purchase of interest of lots 9 and 10, block 41, J. H. White lands, Archer County, Texas, total cost $21,000.00, this payment $11,000.00. The last payment of $11,000.00 says "Pay to the order of Security National Bank." The next item is check No. 246, dated July 24, in the amount of $10,000.00, the voucher notation is, to purchase the interest of lots 9 and 10, block 41, J. H. White

lands in Archer County, Texas. That was sold to Fain-McGehee. The records do not show, except that it was sold. We have a memorandum here that it was sold to Fain and McGehee. It shows we got $1,796.86 for it, and an oil payment of $538.04. We paid $21,000.00 for it, and got back $2,334.90; and the interest was no longer owned by either G. W. Peckham or Wichita Royalty Company at the time of Mr. Peckham's death. During the time of the original entries, showing the payment of $21,000.00 and the time of his re-sale, the Wichita Royalty Company received certain moneys as to proceeds of minerals accruing to that interest. It shows we got $2,501.51, but I don't have the date that the money was actually received, the approximate date is 10-22-24—that is the date it was entered on our records. It was from the original run, up to that date. I don't know who paid those oil runs, off-hand. We received some money from the sale, $424.39, covering the period from 8-1-24 to 10-21-24, we received a total payment of $2,-
815 925.90. I, as trustee, did not have any of that property left when I became trustee. I think it is to the best interest of the stockholders whom I represent to ask that in an accounting between the parties there should be charged against those liable therefor the amount of money that the royalty company paid for that interest, with interest credited, of course, with the sale price later received, of $2,334.90, and further credited with the $2,925.90 that we received as the sale of oil.

I next have the file on property No. 79. I have here royalty company check No. 373, the voucher notation shows, dated May 25, 1925, pay to the order of G. W. Peckham, $2,500.00; in the upper left, to purchase 1/16th of the royalty in the Routan land, 117 acres in Archer County, Texas. $2,500.00. The proceeds of that check were deposited to the credit of G. W. Peckham on May 5, 1925. The deed was not dated until June 30, 1925, and filed for record November 5, 1925, at 8:20 A. M. The deed to the property described in our voucher was executed by J. H. Massie and George B. Ray, runs to

the Wichita Royalty Company, who is the grantee. That property produced them all. I have the record of such production and the receipt thereof by the Wichita Royalty Company.

Mr. Rogers:
We offer the oil runs in evidence.

(Marked "Defendant's Exhibit No. 41" as follows:)

816 DEFENDANTS' EXHIBIT No. 41.

"Royalty 79.

Routon.

Purchased from G. H. P. but assignment came from Ray & Massie, dated 6-30-25.

Co. Paid for Roy. 79.

5-5-25		Co. Ck. No. 373 favor G. W. P. Paid 5-5-25 indorsed G. W. Peckham and deposited to Cr. of G. W. P. on 5-5-25	2,500.00

Sale of Oil from Roy. 79:

7-1-25	3-31-26	Sale of Oil	203.45
4-1-26	4-30-27	Sale of Oil	140.70
5-1-27	5-31-28	Sale of Oil	36.86
"	"	Lease Rental	1.06
6-1-28	5-31-29	Sale of Oil	21.25
6-1-29	5-31-30	Sale of Oil	13.11
6-1-30	11-30-30	Sale of Oil	2.80
		Total shown by books	$419.23

Probably abandoned."

817 The Witness:

The last money received from oil produced on that property was $2.80, from June 1, 1930, to November 30, 1930, from which time nothing has been received, and I think the property was then abandoned, and is of no market value. I consider it to the best interest of the stockholders to offer to reconvey that property upon being paid the original purchase price which Wichita Royalty Company paid G. W. Peckham for it, with interest thereon, upon such amount being credited with such oil runs as we have received. I make such offer and tender.

I next have here property No. 80, generally known as the Anderson land in Archer County, Texas, which property is evidenced by two deeds, each executed by G. W. Peckham, one on the first and the other on the 20th of July, 1925. One filed September 23, and the other filed September 28, 1925. The Wichita Royalty Company being the grantee in each. The checks issued in payment of that interest are 385, dated June 24, 1925, for $6,000.00 to G. W. Peckham and deposited to his account. The voucher notation shows 1/16th royalty on block 21, east twenty-five acres, north fifty acres of west one hundred acres, block 19; east sixty acres of west one hundred and sixty acres, block 19; south sixty acres of west eighty acres, block 22, J. L. Anderson south pasture sub-division, Archer County, Texas. 1/8th royalty on west half, southwest quarter, northwest quarter of section 2, J. Pointevant Survey, Young County, Texas; 217 acres in J. L. Anderson subdivision known as Holiday District; twenty acres in the Pointevant survey, Young County, Texas.

818 That voucher notation is in original typewriting.

That indicates that the voucher notation was written at a time subsequent to the original issuance of the check.

I have here check 387, dated June 29, 1925, pay to the order of G. W. Peckham for $5,000.00, one sixteenth of royalty on all of block 21, in the east twenty-five acres of the north fifty acres of the west one hundred acres,

block 19; east sixty acres, west one hundred and sixty acres of block 19; and the south sixty acres of the west eighty acres, block 22, J. L. Anderson subdivision, Archer Cou nty, Texas; one eighth of royalty in west one-half of the southwest quarter of the northwest quarter, section 2, J. Pointevant Survey, Young County, Texas. That voucher notation is in carbon. The proceeds of that check were deposited to the credit of G. W. Peckham on June 29, 1925, in the City National Bank. Property No. 80 did not make any oil during the time it was owned. I will let you see the records of what it produced.

Mr. Rogers:

We offer the statement of oil runs in evi lence.

(Marked "Defendant's Exhibit 42" as follows:)

DEFENDANTS' EXHIBIT No. 42.

"Royalty 80.

Sale of Oil & Gas.

From	To					Amount
7-18-25	5-31-26	Sale of Oil	No Gas.	Norday—Humble		832.43
7- 1-25	5-31-26	" "	" "	Perkins—Texhoma		2,041.48
7- 1-25	5-31-26	" "	" "	Gulf—Empire		661.49
2- 1-26	4-30-26	" "	" "	M. & F.—Texas		30.22
6- 1-26	5-31-27	" "	" "	Humble		508.43
6- 1-26	5-31-27	" "	" "	Perkins—Cont.		1,809.51
6- 1-26	5-31-27	" "	" "	Gulf—Empire		303.58
6- 1-26	5-31-27	" "	" "	Texas M. & F.		17.26
9- 1-25	5-31-27	" "	" "	Humble—Prairie		48.63
6- 1-27	5-31-28	" "	" "	Humble		169.43
6- 1-27	5-31-28	" "	" "	Perkins—Cont.		702.98
6- 1-27	5-31-28	" "	" "	Gulf—Empire		119.70
6- 1-27	3-31-28	" "	" "	Texas Co.—F. & M.		7.57
6- 1-27	5-31-28	" "	" "	Humble—Prairie		13.75
6- 1-28	5-31-29	" "	" "	Humble		99.67
6- 1-28	5-31-29	" "	" "	Cont.—Perkins		561.90

From	To						Amount
6- 1-28	5-31-29	"	"	"	"	Gulf Empire	94.21
4- 1-28	12-31-28	"	"	"	"	Texas Co.—F. & M.	6.69
6- 1-28	5-31-29	"	"	"	"	Humble—Prairie	11.76
6- 1-29	5-31-30	"	"	"	"	Humble	59.77
6- 1-29	5-31-30	"	"	"	"	Cont.—Perkins	715.51
6- 1-29	5-31-30	"	"	"	"	Gulf—Empire	62.25
2- 2-29	5-31-30	"	"	"	"	Texas—F. & M.	15.61
6- 1-29	5-31-30	"	"	"	"	Humble—Prairie	9.10
6- 1-30	7-31-31	"	"	"	"	Humble—Perkins	27.79
6- 1-30	12-31-31	"	"	"	"	Humble—Perkins	400.55
6- 1-30	1-31-32	"	"	"	"	Gulf Perkins	95.02
6- 1-30	12-31-32	"	"	"	"	Cont.—Perkins	25.45
6- 1-30	9-30-31	"	"	"	"	Humble—Prairie	7.41
1- 1-32	3-31-36	"	"	"	"	Cont.—Perkins	706.04
1- 1-32	3-31-36	"	"	"	"	Cont.—Perkins	9.41
						Total Sale of Oil shown by books	10,174.51"

The Witness:

In reading off the description of the property I have included several in my notation, but all of such properties are generally known and carried upon our books as property No. 80. The last payment received by the Royalty Company upon that, from the lease, was March 31, 1936, $715.45, the runs accrued from January 1, 1932, to March 31, 1936. During that period of time those runs had been suspended due to matters growing out of this litigation, and were released under a judgment of the District Court of this county in garnishment. I consider it to the best interest of the stockholders to offer to reconvey this property upon being repaid the original payment made for it, with interest thereon, after crediting the sum with the payments received, and I make such offer and tender.

Next is property No. 97, four checks issued in payment of that; they are, No. 598, dated April 11, 1927,
821 pay to the order of B. L. Fain, $500.00; that is voucher notation, purchase of oil runs to apply on purchase of $4,200.00 in oil runs due from Roxana on the Milner, Wilbarger County, purchase price $3,000.00. The original check was indorsed by B. L. Fain, that is his signature. For a number of years, I was an employee of the company of which B. L. Fain was trustee, and am familiar with his handwriting. I do not know to whom the proceeds of that check were deposited. The next check is No. 602, dated April 23, 1927, pay to the order of B. L. Fain, $1,000.00, voucher notation was, purchase of oil runs to apply on purchase of $4,200.00 in oil runs due from Roxana Petroleum Company on C. J. Milner, Wilbarger County, Texas, purchase price $3,000.00. It is indorsed B. L. Fain, and under it the indorsement of G. W. Peckham. That is not the signature of B. L. Fain, it is the signature of G. W. Peckham. The proceeds of that check were deposited to the credit of G. W. Peckham on April 23, 1927. The next check is No. 607, dated May 6, 1927, pay to the order of B. L. Fain, $500.00; voucher notation, purchase oil runs to apply on purchase of $4,-200.00 in oil runs, due from Roxana Petroleum Corpora-

tion, Milner lands, Wilbarger County, purchase price $3,000.00; indorsement by B. L. Fain and under it G. W. Peckham; that is not the signature of B. L. Fain, it is the original signature of G. W. Peckham. The proceeds were deposited to the account of G. W. Peckham May 6, 1927, in the plaintiff bank. The next is check No. 610, 822 May 16, 1927, pay to the order of B. L. Fain, $1,000.00, voucher reading, purchase oil runs to apply on purchase of $4,200.00 in oil runs, due from Roxana Petroleum Corporation by J. T. Milner lands, Wilbarger County, Texas, purchase price $3,000.00; indorsed by B. L. Fain and under it G. W. Peckham. That is not the signature of B. L. Fain, it is the signature of G. W. Peckham. It looks like the signature of B. L. Fain is written by G. W. Peckham. The proceeds of that check were deposited to the credit of G. W. Peckham on May 16, 1927. The Wichita Royalty Company received the money as the proceeds of oil runs from that property and I have the record of such receipts.

Mr. Rogers:
We offer it in evidence.

(Marked "Defendant's Exhibit 43" as follows:)

DEFENDANT'S EXHIBIT 43.

"Roy. 97. Milner Oil Payments.

4-15-27 Assigned by B. L. Fain to Co.
Assignment attached.
Sale of Oil & Gas.

3- 1-27	5-15-27	Sale of Oil	193.64
5-16-27	5-30-27	Sale of Oil	15.03
6- 1-27	5-31-28	Sale of Oil	151.46
6- 1-28	11-15-28	Sale of Oil	37.72
		Total	397.85"

823 The Witness:

Those oil runs totaled $397.85, the last payment received in 1928. I think that property had been abandoned prior to the death of G. W. Peckham. Our interest was an oil payment, under an oil and gas lease.

Mr. Rogers:

We offer it in evidence.

(Marked "DEFENDANT'S EXHIBIT 44" as follows:)

Assignment from B. L. Fain to Wichita Royalty Company for a recited consideration of $3,000.00, transferring 20/75ths of a $17,500.00 oil payment, under an oil and gas lease executed by T. J. Milner and Wife. Payable out of one-third of the first oil produced until $4,200.00 is paid.

Dated .... day of ....., 19...

Filed for record May 20, 1927.

Acknowledged April 15, 1927.

824 The Witness:

That property has not had any market value since I became trustee. I consider it to the best interest of the stockholders to offer to reconvey such, if any interest, the Wichita Royalty Company may have in and to that property, upon being repaid the amount we have paid for it, with interest credited, of course, with the payments that we have received thereon, and I make such tender and offer.

I have here voucher check and its notation, No. 317, for Royalty No. 78, Curtis Lane; voucher notation is to purchase 1/2 of 1/16th royalty in one hundred and twenty-five acres known as Block 46, of the Meade L & M pasture subdivision of the D. G. Thomas property, Survey Abstract No. 458 Archer County, Texas. The check is pay-

able to G. W. Peckham, deposited to his account December 23, 1924, with the City National Bank. As to the oil runs, the amounts received, from January 16, 1925, to May 31, 1925, we received $23.98; and from June 1, 1925 to August 31, 1926, we received $15.05; on November 25, 1926, we received a check for $1.22 as final run. That property was abandoned, and since that time it has had no value. I think it is to the best interest of the stockholders that I ask that the consideration paid therefor, with interest thereon, credited with those small amounts received therefrom, be demanded, with a credit thereon, of such oil runs and upon such, convey back the property so received; I make such tender and offer to do equity.

825 The east thirty-three acres of a seventy-one acre tract is a Milligan Survey in Callahan County, on the books of the royalty company, No. 81. Check No. 427, the voucher notation: Property No. 81, to purchase one-fourth of the royalty on the thirty-one acres in the seventy-one acres of land out of the Milligan survey, Callahan County, Texas, interest, $2,500.00. The voucher check was payable to the plaintiff's Bank's order, deposited to the credit of G. W. Peckham, October 8, 1925. The deed itself heretofore identified and offered in evidence as Defendant's Exhibit No. 18. The voucher notation with reference to property No. 81, to purchase of one-quarter of the royalty of the east thirty acres of the seventy-one acre tract out of the Milligan Survey, Callahan County, Texas, $2,500.00; the check is for $5,500.00; the balance of the voucher notation is the description of property No. 82, one $1,500.00 and additional property not described for $1,500.00. All of the voucher notation is in the original typewriting. The property did not produce any oil, we never got any money out of it or sold any interest, or otherwise disposed of it. Upon the filing of the cross action in 1931, I then thought, and now think, that it is to the best interest of the stockholders that I offer to convey that upon being paid back that which was paid for it, and did tender it back at that time, and do now.

The property known as the Porter Ranch is No. 83, I will give the vouchers and the checks on that; check No. 461, dated December 28, 1925, pay to the order of City National Bank, $1,250.00; the voucher notation reads, "Producing royalties." Subsequent notation, that it is No. 83, M. L. Porter Ranch. The last notation is in pencil, that was probably made as soon as we learned that the money actually—the property the money actually went to. The check was originally issued and delivered to Mr. Peckham, the information as to its purchase was producing royalties, and it was so written, and no description of such producing royalty was given that I might identify. It is dated December 28, 1925. The next payment on the Porter Ranch was check No. 554, dated December 2, 1926, and the voucher reads, "Notes payable, land in fee, to apply on balance due on M. L. Porter, one thousand, seventy acre purchase, $920.82, interest expense on above note, $221.00." That voucher notation was a part of a larger check. The voucher and check No. 554, was in the amount of $1,500.00, payable to the City National Bank, deposited to the credit of G. W. Peckham. The next is check No. 670, dated December 20, 1927, pay to the order of G. W. Peckham, $147.33, voucher notation reads, "Interest expense on Porter property from December 1, 1926, to December 1, 1927." Deposited to the credit of G. W. Peckham. The next is check No. 778, January 14, 1929, pay to the order of G. W. Peckham, $21.63, voucher notation reading, "Taxes paid on Porter Ranch, our proportion." The check was cashed by G. W. Peckham. Next is check No. 857, dated November 29, 1929, payable to the order of Knight & Hines, $84.41. To our part interest and taxes on Porter Ranch, Archer County, Texas. The next is check No. 970, dated December 17, 1930, W. T. Knight, attorney-in-fact, $102.83; the voucher notation reading, "To our proportion of assessment for 1930, on M. L. Porter Ranch, per statement attached." The ink notation on it, "Interest paid." That was also after Mr. Peckham's death. Mr. Peckham never executed an assignment

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or conveyance or any memorandum in writing signed by him of any kind or character, conveying the Porter Ranch or any interest in it, evidencing that he held it in trust for the Wichita Royalty Company. During the period that Mr. Peckham and I were negotiating in the fall of 1929, as I have heretofore testified, and not having any deed to that property, I undertook to and did institute a suit in Archer County to establish that title in the Wichita Royalty Company. It developed that none of the Wichita Royalty Company's money went into the original purchase of the property by G. W. Peckham, but on the contrary, G. W. Peckham bought the interest in the Porter Ranch with his own funds. Mr. Peckham died without a will, he left at least two minors. Upon discovering those facts and such other facts as I might have discovered, I abandoned and dismissed that suit, and filed upon it and re-tender the property and sue for the amount paid therefor, in the original cross action that I filed. I still consider it to the trust's interest to repudiate the transaction and tender it back, and I offer to reconvey it upon the restoration of the amount paid therefor, with interest thereon.

We show they got some lease rentals on the
628 Porter Ranch, check from G. W. Peckham, dated 2-27-26, in the amount of $111.67, and they also received lease rentals of $115.88, on 7-29-27. I also tender back and offer to do such equity as is required with respect to repudiating each and all transactions which G. W. Peckham as an individual had with himself as trustee with respect to all transactions connected with, involved in, or growing out of either the Marlborough partnership, or its corporate successor, the Texas Investment Company.

The next is property No. 95, lot 10, North Anderson Ranch, I have here voucher No. 550, dated November 20, 1926, check payable to the City National Bank in the amount of $7,500.00 and the voucher reads, "Royalties owned, property No. 97, being 3/16ths interest in the leasehold estate, eighty acres east half of lot 10, north Anderson Ranch, S. P. Survey, Archer County, Texas,

$5,000.00. That is check No. 550. I never got a deed or letter, or any memorandum in writing or any other evidence of title signed by the payee in the check, City National Bank, or G. W. Peckham, or anybody else for that leasehold estate. It does not show upon the voucher notation to be a mineral interest, it is a leasehold. He did not give any description of any leasehold estate that he was preparing to receive that money for, so that I could tell the lessor the date of the lease, expiration of it, or the drilling requirements, the rental paying period, or any terms or provisions of that lease. The royalty company never received anything of any kind for that money. The $7,500.00 check was deposited to
829 the credit of G. W. Peckham on November 20, 1926, in the City National Bank. I have tendered back and now offer to disclaim or re-convey, or do any other matter or thing that equity should require to repudiate that transaction and to recover against those liable therefor, the amount that I paid for that interest that the trust did not acquire.

I have here also the property known as No. 96, Southwest sixty acres of the Polk land in Archer County; check No. 550, dated November 20, 1926, made payable to the City National Bank in the sum of $7,500.00; on the voucher it reads, "Royalties owned property No. 96, to apply on purchase of one-fourth of royalty on the southwest sixty acres of polk lands, Abstract No. 717 of William Polk preemption survey, Archer County, Texas; also one-fourth of the seven-eighths leasehold estate on the west forty acres of the same land, $2,500.00." That money was deposited to the account of G. W. Peckham in the City National Bank. The voucher also recites that it is the purchase of a 3/16th interest in the east half of oil and gas leasehold estate on eighty acres out of the east half of lot 10, North Anderson Ranch. The check was given in the amount of $7,500.00—that check is No. 550, and it purported to purchase two properties, first, royalties owned, property No. 95, 3/16ths interest in the leasehold estate, eighty acres, east half of lot 10, North Ander-

son Ranch, S. P. Survey No. ...., Archer Coun-
830 ty, Texas, $5000.00. I have already testified about that property and it is known as the Anderson property—North Anderson Ranch. The balance of the voucher notation which I read a moment ago, relates to property No. 96. The next payment on property No. 96, is check No. 583, dated March 1, 1927, payable to the City National Bank in the amount of $301.82. The voucher reads, "Royalties on property No. 96, last payment on purchase of 1/4th of royalty on the southwest sixty acres of the E. Polk land, abstract No. 717 of the William Polk preemption Survey, Archer County, Texas; also one-fourth of the 7/8ths leasehold estate on the west forty acres of the same land. This payment, together with the payments on checks Nos. 550, and 554, make a total cost of $3,000.00 for the above interest—that is all the payment on the land. The next check is No. 554, dated December 2, 1926, payable to the City National Bank for $1,500.00; on the voucher reading, along with other property purchased in the same check, royalties owned, Property No. 96, to apply on purchase of 1/4th of royalty on the southwest sixty acres of the E. Polk lands, Abstract No. 717, William Polk preemption Survey, Archer County, Texas; also one-quarter of the 7/8ths leasehold estate on the west forty acres of the same land. The amount is $193.18. I do not have the conveyances of that property to the Wichita Royalty Company, none was ever executed. The Wichita Royalty Company never got a letter or a memorandum in writing or any other evidence of the royalty company's ownership of that described inter-
est upon its records. The royalty company has
831 never received any proceeds of production produced thereon, or any rents or revenue therefrom, or any other kind or character of credit upon its outlay for its supposed purchase. I think it is to the trust's best interest to repudiate that transaction, if any there was, and tender back and offer to re-convey, if required, if there be anything to reconvey and ask for a restoration of the amount paid Mr. Peckham therefor, and I offered so to do equity.

The royalty property in Ellis County, Oklahoma is No. 93, the voucher description of it; on check No. 554, dated December 2, 1926, check payable to the City National Bank in the amount of $1,500.00; this property was conveyed along with others, and the voucher notation reads, "Royalties owned, property No. 93," being half of the royalty on the south half of the northeast quarter of section 35, township 19 north, range 21 west, Ellis County, Oklahoma; also 7/8ths oil and gas lease on the same land, amount $160.00. That is the assignment of that oil and gas lease from G. W. Peckham to the Wichita Royalty Company. That property never produced. I will state that I was acquainted with various transactions which various of my associates had in the purchase and sale of oil and gas properties, mineral interest, and other oil properties in the vicinity of Wichita Falls, and in Southern Oklahoma and in Ellis County, Oklahoma, and generally in this area, of the mid-continent field. During that period of time. However, I would not want to undertake to say that I am an expert on values. In
832 this particular instance, that is the property we are talking about, it is my understanding that this was a wildcat well they were drilling somewhere in that vicinity. I do not think it has any value now, nor has it had in the last few years. I think it is to the best interest of the stockholders that they repudiate and tender back, and I now do so.

I will now get trust check and trust voucher No. 557, in Hartley County; voucher checks, the notation reads, "Dated December 10, 1926," payable to the City National Bank in the amount of $1,920.00; and on the voucher was a notation written, royalties owned in full payment of one-half royalty on 640 acres in Hartley County, Texas, $1,920.00. That is property No. 94. I do not know what disposition the payee bank made of that check, except what information we have on it, which says, "Draft from Texas State Bank, Houston, cage 16." Mr. Carson testified to that the other day. I consider that it is to the trust's best interest to repudiate that transaction and ask

for a restoration of the return of the payments therefor and upon which I would be willing to reconvey the property.

Heretofore I have identified certain checks with the voucher notations, which showed that they were in payment of a salary, as Mr. Peckham caused the books and records of the trust to show; there are additions to those to which I have testified, other items which he did not deposit to his account with the plaintiff bank, but which he cashed at the window. Those salary checks
833 I have heretofore testified about was deposited to his account with the plaintiff bank. I will give a list of the checks and identify them by number, that we now hand you. Check No. 1,195, dated January 16, 1923, $500.00, pay to the order of G. W. Peckham. The voucher notation shows, "To cover traveling expense, Kansas City, Chicago, New York." Indorsed G. W. Peckham by E. E. Scannell. The next one is No. 1,272. I got the money on the check just mentioned and gave it to him at the train, when he got back, I made an itemized account of the expenses. I have mentioned check No. 1,252, dated March 20, 1923, payable to the order of City National Bank for $500.00, and the voucher reads, "Traveling Expenses for George W. Peckham trustee, for Wichita Royalty Company." The next one is No. 1,339, dated June 1, 1923, pay to the order of G. W. Peckham, $500.00, and the voucher reads, "Executive salary for the month of May." The next one, check No. 13, dated July 3, issued to George W. Peckham, $500.00, the voucher reads, "Executive salary for the month of June, 1923." Check No. 115, dated November 30, 1923, issued to George W. Peckham in the amount of $500.00 and the voucher reads, "Salaries, executives, for the month of November, 1923." Check No. 180, dated March 1, 1924, issued to George W. Peckham, the voucher reads, "To reimbursement on insurance premiums, Studebaker touring car, amount exactly one-half of premium, the amount of $30.95." Check No. 221, May 31, 1924, issued to G. W. Peckham for $500.00, and says, "Salaries, Executives" on the

834 voucher. Check No. 261, dated September 3, 1924, issued to G. W. Peckham, $500.00, Salaries Executive, in pencil notation it says, "August." Check No. 529, dated August 20, 1926, issued to G. W. Peckham for $400.00, voucher reading, "Salaries executive for the month of August, 1936." Check No. 643, dated September 30, 1927, issued to G. W. Peckham in the amount of $400.00, and the voucher reads, "Salaries executives for the month of September, 1927." Check No. 644, dated October 1, 1927, voucher reading, "Information on eighty acres, Section 35, Ellis County, Oklahoma, $20.00; on Section 54, league 186, Hartley County, Texas, $40.00; telephone call to Breckenridge Texas on Hartley County title, work on title, done by DeMontel and Sanford, $2.85, total $62.85. Check No. 398, dated July 20, 1925, to G. W. Peckham for $10.00, and it says on voucher, "Revenue stamps on deed for interest in Norday and Vernon royalties, $10.00." Check No. 438, dated November 6, 1925, issued to G. W. Peckham in the amount of $4.75; on the voucher, "Revenue stamps on royalty deed to property No. 81, $2.50, miscellaneous expense, exchange on draft on property No. 81, $2.25."

The books and records I have examined show those checks to have been cashed, rather than deposited. The total is approximately $4,400.00.

I have added up the check that have heretofore been identified in evidence, that was drawn upon and charged to the Wichita Royalty Company's deposit account with the plaintiff bank, and the aggregate total of sums so charged against it and deposited to the account of
835 G. W. Peckham in the bank, is $253,418.41.

I have likewise, during the period, examined the payments that were made by the plaintiff bank from the account to which these trust funds had been transferred, that were applied upon G. W. Peckham's personal obligation to the plaintiff bank, and have totaled the payment, which is $250,078.76 That is the amount I figured that G. W. Peckham paid out of his personal account with the plaintiff bank, to which certain funds had been

transferred from the Royalty Company's account with the bank and which $250,078.76 payments were credited by the plaintiff bank upon G. W. Peckham's personal liability to that bank, as shown by the liability records of the bank, and the deposit account of the bank. I have trust check No. 169, and the voucher notation therefor, the check is dated February 29, 1924, payable to the order of G. W. Peckham, $1,200.00; the voucher notation reads, "To purchase of 1924 model Special Six Studebaker, $1,200.00; deposited to the account of G. W. Peckham, February 29, 1924, in the City National Bank." I remember that automobile, and prior thereto it had been bought by G. W. Peckham in his own name. It was a used car. $1,200.00 is below the then list price of that character of automobile. I do not know whether it was ever transferred of record in the name of the Wichita Royalty Company or not. It was thereafter sold for $555.00 on September 30, 1926. The company got that money, and did not have the car when I became trustee.

836 E. E. SCANNELL, recalled, for cross examination, on behalf of Defendant Harrell, examined by Mr. Boone, examination to be for all defendants.

I started keeping the books of the Wichita Royalty Company in 1921, at that time R. R. Robertson was trustee, and he continued as trustee until December 31, 1922. The next trustee was George W. Peckham, who was appointed on January 1, 1923, by the Judge of the 30th District Court. I knew Mr. Peckham slightly before he was appointed. Our offices were over in the Morgan Building and George Peckham and Bill Peckham and Walter Peckham and B. L. Fain had an office across the hall. It seems to me they came there from Houston in the spring of 1921, or in the summer, or soon after I went to work over there. I was a pretty b sy man along about that time, and I didn't get very well acquainted with them at the start. After George Peckham was elected trus-

tee I became well acquainted with him, and a few times we traded around together. I have gone over a lot of these account of the Wichita Royalty Company which I have presented against George Peckham. From the time I started to work for the Wichita Royalty Company I knew most every check that went out, and signed the majority of them, kept the books directly or indirectly, each month I got the bank statement and checked over the checks. Sometimes the bank statements were sent to us and sometimes we went and got them. As a rule the checks were posted from the voucher and then checked back against it. As a rule I knew what each
837 check was for. I was a good friend of George Peckham's, to such an extent that I held property in my name for him. He did trust me with several thousand dollars when he built his home, but it was done that way in order to make the Addition appear more salable, that an outsider was building that house. It was in my name, I contracted for it, however, George Peckham looked after the actual building. It was built by a man named Allen. He lives here in Wichita Falls. It seems to me that the contract price was $17,500.00, or $15,000.00, I don't recall which. It was built in the Marlborough Addition. I knew the house and lot belonged to George Peckham, who had bought it from the Marlborough Addition. I did not know at that time that the Marlborough Addition belonged to the Wichita Royalty Company.

Mr. Rogers:

We object to that as a conclusion of law, involving a mixed question of law and fact, and not the best evidence of title, and I move that the question and the prior testimony be stricken.

The Witness:

As a matter of fact, the lot had been bought long before that, before it became the property of the Wichita Royalty Company.

Q. When did the Wichita Royalty Company acquire a one-half interest in the Marlborough Addition?

Mr. Rogers:

The same objection to that and to all testimony relating to the title of the Marlborough Addition, or the ownership of stock in the Texas Investment Company, and for the further reason that the testimony already
838 shows that the addition was bought by and with the money of George Peckham as an individual, that it was a suburban venture, unrelated to the oil and gas business, that even to have bought it from a third person would have been beyond the scope of the power given to G. W. Peckham by the declaration of trust, and no transaction between George Peckham as an individual and himself as trustee, concerning the property, beyond the scope of that authority by the declaration of trust, in which he might deal, could be binding upon the trust. This objection is made to this testimony and all testimony that may hereafter be offered in respect to any matter concerning such transaction. May it be agreed that the objection continues throughout the record?

Mr. Boone:

Yes, sir.

(Which objection was by the Court overruled, to which ruling the Defendant then and there excepted.)

The Witness:

My recollection is that it was 1926, these lots were bought long prior to that; the record will show.

Mr. Boone:

We offer the deed in evidence.

(Marked "Defendant's Exhibit 45" as follows:)

939 DEFENDANT'S EXHIBIT 45.

Deed from G. W. Peckham to Wichita Royalty Company.

Consideration $1.00 and other valuable considerations.

Conveying to Wichita Royalty Company undivided 1/2 interest in and to those certain lots, tracts and parcels of land situated in Wichita County, Texas, described as follows:

Tract No. 1:

Being 51.59 acres of land out of the Cyrus Eakman Survey and described by metes and bounds as follows, to-wit:

Beginning at a stake for the common corner of Blocks 17, 18, 37 and 38 of Highland Irrigation Subdivision, which stake is 1076.2 feet west and 3237.6 feet south from the northeast corner of Cyrus Eakman Survey; thence west 1076.2 feet, a stake for the southwest corner of block 47 of said Irrigation Subdivision thence south 115 feet to a stake in center of avenue "X"; thence north 82 degrees and 40 minutes west with center line of Avenue
840 "X" 391.2 feet to a stake in center of Taylor Street; thence north 7 degrees and 20 minutes east with center line of Taylor street 890 feet to a stake; thence north with center line of Taylor street 641.3 feet to a stake in North line of Avenue "U"; thence east 30 feet to a stake for the southwest corner of lot eight (8) Block Eleven (11) Southside Addition; thence North with the West line of said Lot Eight (8), 134 feet to a stake in South line of Lot Four (4) Block thirty two A (32-a) Highland Addition; thence south 82 degrees and 40 minutes East 72.4 feet to an iron pipe in center of Taylor Street thence North 7 degrees and 20 minutes East with

center line of Taylor Street 30.3 feet to iron pipe under fence; thence East 1194.5 feet to stake; thence south 155 feet a stake for Southwest corner of Lot Seventeen (17), Block Nine (9), Southside Addition; thence East 50 feet to stake for Southeast corner of said Lot Seventeen (17); thence South along west line of Cotton Street 654.4 feet to a stake for Southeast corner of Block Twenty (20) of said Southside Addition; thence East 6.8 feet to stake for Northwest corner of Block Nineteen (19) and Northeast corner of Block Thirty Six (36) of said Highland Irrigation Subdivision; thence South 809.4 to the place of beginning, containing Fifty one (51.59) and .59/100 acres of land, and comprising lots Ten (10) to Sixteen (16) inclusive in Block (9); Lot One (1) to Eight (8) inclusive in Block Ten (10); Lots One (1) to Eight (8) inclusive in Block Eleven (11); all of Block Number Thirteen (13); all of Block Number Fourteen (14); all of Block Number Fifteen (15); all of Block Number Twenty (20); all of Block Number Twenty One (21); and all of Block Number Twenty Two (22); all being out of the Southside Addition to Highland Addition to the City of Wichita Falls, Texas; and also comprising the following:

841

All of Block Number Thirty Six (36); all of Block Number Thirty Seven (37); all of Block Number Thirty Seven (37); all of Block Number Forty Seven (47); all of Block Number (48); all of Block Number Seventy Seven (77); and all of Block Number Seventy Eight (78); of the Highland Irrigation Subdivision according to the maps or plats duly recorded in the Deed Records of Wichita County, Texas.

Tract No. 2:

Being 6.06 acres of land out of the Cyrus Eakman Survey, and described by metes and bounds as follows, to-wit:

Beginning at a stake for the northwest corner of Lot 2, Block 12, Southside Addition to Highland Addition;

thence North 7 degrees and 20 minutes East 30 feet to stake in center of Avenue "U" thence East with the center of said Avenue "U" 145.2 feet to a stake; thence South
842 with center line of Taylor Street 611.3 feet to a stake; thence South 7 degrees 20 minutes West with the center line of Taylor Street 890 feet to a stake in center of Avenue "X", same being the Southwest corner of a tract of 51.59 acres heretofore deeded to parties herein named; thence North 82 degrees and 40 minutes West with center of Avenue "X" 190 feet to a stake; thence North 7 degrees and 20 minutes East with center line of Alley 920 feet to a stake; thence South 82 degrees and 40 minutes East 10 feet to a stake; thence North 7 degrees and 20 minutes East with West line of lot 2, Block 23, of said Southside Addition 202 feet to a stake in center of Allen Avenue; thence North 82 degrees and 40 minutes West with center of said Allen Avenue 50 feet to a stake; thence North 7 degrees and 20 minutes East with the West line of Lots 23 and 2 Block 12, of said Southside Addition, 355 feet to the place of beginning, containing 6.06 acres of land and comprising the East one-half of Blocks Nos. 40-a and 41-a of the Highland Addition to the City of Wichita Falls, and also Lots 1, 2, 23 and 24, Block 12, and Lots 1 and 2 of Block 23, of the said Southside Addition.

This conveyance is expressly made subject to the indebtedness against said tracts and each of them secured by vendor's liens retained and described in two certain deeds from the Highland Irrigation Company to J. A. Kemp, W. H. Peckham, G. W. Peckham and J. T. Harrel,
843 said deed covering Tract No. 1 above described being dated September 19th, 1925, and recorded in the Deed Records of Wichita County, Texas, in Volume 249, at Page 5, and said deed covering Tract No. 2 above described being dated January 8th 1926 and recorded in the Deed Records of Wichita County, Texas in Volume 255, at Page 260. As a part of the consideration for this conveyance the said Wichita Royalty Com-

pany assumes and agrees to pay one-half (1/2) of the indebtedness to the Highland Irrigation Company described in said deeds, and to save the said G. W. Peckham harmless from any liability on said vendor's lien notes.

To Have And To Hold the above described property together with all and singular the rights and appurtenances thereto in anywise belonging unto the said Wichita Royalty Company, its successors or assigns forever, and the said G. W. Peckham does hereby bind himself, his heirs, representatives and assigns, to warrant and forever defend, all and singular, said property unto the said Wichita Royalty Company, its successors or assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof.

In Witness Whereof the said G. W. Peckham has executed these presents this, the 10th day of April, A. D. 1926.

(Signed) G. W. PECKHAM.

844 Duly acknowledged by G. W. Peckham, on April 10, 1926, before E. E. Scannell, Notary Public in and for Wichita County, Texas.

Mr. Rogers:

We object to the introduction of the deed for the reasons above shown. Further, there is no proof of any delivery of the instrument to any person authorized to bind the trust by its acceptance. The testimony affirmatively shows that it was not intended that a delivery should be effect by the physical handing of it to the then bookkeeper of the trust, it being handed under the express direction that it should be secret and it also involves a subject matter not within the authority of the trustee, not within the scope of his powers, a transaction between himself as an individual, himself as trustee, and not binding upon the Wichita Royalty Company.

(Which objection was by the Court overruled, to which the defendant then and there excepted.)

The Witness:

Defendant's Exhibit 45, appears to be an assignment on the Malborough Addition, deed from Peckham to one-half interest in that addition. Signed by George Peckham, April 10, 1926. I took his acknowledgment as a notary public on that date. It was never recorded. The books show that on March 6, he gave a check for $17,623.70, from George Peckham, payable to the City National Bank, and notation on the voucher shows that it was for the purchase of the Marlborough Ad-
845 dition. Mr. Peckham told me to put that on the book, it is dated March 6, and probably put on the books during that month. On the check that went to the City National Bank, it had the amount of money payable to that bank. I could not say as to the notation on the voucher, it shows that this is the original, must have been put on sometime subsequent to it, probably, I do not have that information. The book showing the facts stated, has been in the office, and open for inspection to any interested person in the Wichita Royalty Company since March, 1926. I would say in March, 1926, the books of the Wichita Royalty Company showed that company owned a half interest in the Marlborough addition. I also have a journal entry, which is the original, from June 1, 1925, to May 31, 1927, Journal entry No. 27, and Journal entry No. 28. No. 27 says, March 6, real estate city property, $23,250.00 debit; notes payable Highland Irrigation Company, $23,215.00, to settle our half interest is six vendor lien notes of $7,738.50 each, due the Highland Irrigation Company, in one, two and three years, from September 19, 1925, bearing eight percent interest. On our purchase of half interest in Marlborough Addition to the City of Wichita Falls. Their journal entry 28, and checks 478 and 479 for the balance of consideration. That journal entry 27, is in the handwriting of the bookkeeper who kept the books under me. I got the information on

the journal entry from Mr. Peckham. I knew the Wichita Royalty Company was buying a half interest in the Marlborough Addition. In March, 1926, our books
846 showed that "Our Company, Wichita Royalty Company, owned a half interest in the Marlborough Addition under a contract of purchase. Journal entry No. 28, March 6, 1926, real estate. City property. Debit $2,727.00, credit notes payable Highland Irrigation Company, $2,720.00. To set up our half interest in six vendor lien notes of $909.00 due Highland Irrigation Company in one, two and three years, from January 8, 1927, bearing eight percent interest on our purchase of half interest in Marlborough Addition to the City of Wichita Falls, Texas. See J. E. 27, check 478, 479 for balance of consideration." The bookkeeper wrote that under my direction, this is the information we had from George Peckham, he told me that the Wichita Royalty Company was buying a half interest in the Marlborough Addition, and I knew it in March, 1926.

Mr. Boone:

We offer in evidence the journal entries No. 27 and 28, marked "Defendant's Exhibits 46 and 47" as follows:

DEFENDANT'S EXHIBIT 46.

JE 27.

March 6 Real Estate—City Property	23215.50
Notes payable—Highland Irrigation Co.	23215.50

To set up our 1/2 interest 6 vendor's Lien notes of $7,738.50 each due the Highland Irrigation Co. in 1-2-3 years from Sept. 19, 1925 bearing 8% interest per annum, on our purchase of 1/2 interest in the Marlborough Addition to the City of Wichita Falls, Texas (See J. E. 28 and checks Nos. 478 and 479 for balance of consideration.)

847 DEFENDANT'S EXHIBIT 47.

1926 J E 28

March 6	Real Estate—City Property	2727.00
	Notes payable—Highland Irrigation Co.	2727.00

To set up our 1/2 interest in 6 Vendor's Lien notes of $909.00 each due the Highland Irrigation Co. in 1-2-3 years from January 8, 1927, bearing 8% interest per annum, on our purchase of 1/2 interest in the Marlborough Addition to the City of Wichita Falls, Texas. (See J. E. 27 and checks Nos. 478 and 479 for balance of consideration.)

848 The Witness:

By reason of the facts stated, I knew that we were entitled to receive the deed to that property for the Wichita Royalty Company. On April 10, George Peckham presented me a deed and asked me to acknowledge it. He told me to say nothing about it, not record it, which is the only information I ever got on it. I never received any information of any kind or character pertaining to that deed. I have been the custodian of all the books, papers and documents of the Wichita Royalty Company. George Peckham did not tell me to do whatever I wanted to with the deed, either by letter, telegram, word of mouth or otherwise. It is my testimony that he told me to keep that deed a secret from everybody. Mr. Peckham was very exacting as to the records of the Wichita Royalty Company, so that no one saw them except us, that were interested in working with them at all times; no stockholders ever saw the Wichita Royalty Company records. I saw them and the bookkeeper that was working under me. We continued to carry on the Wichita Royalty Company part of the improvement on the Marlborough Addition, paving, lights, water and gas, our ledger shows, and that is the complete transaction on that page for that particular period.

Defendant's Exhibit 43 is the original ledger sheet, and shows the expenditures of the Wichita Royalty Company on the Marlborough Addition, May 31, 1928. Those items do not represent the checks paid out by the Wichita Royalty Company on the Marlborough Addition as well as total cost of $65,578.70; that is the offsetting
849 entry to the debit side of this, carrying forward at the end of the year, that has nothing to do with it.

Mr. Boone:

We offer the exhibit in evidence.

(Instrument marked "Defendant's Exhibit No. 48" and reading as follows:)

DEFENDANT'S EXHIBIT 48.

Name—Land in Fee.

Address.....

Date 1926	Items	Fol.	Debits	Date 1926	Items	Fol.	Credits
March 6	C. N. B.	478	17,623.70	May 31		JE43	65,578.70
	S. N. B.	479	6,000.00				
		JE27	23,215.50				
		JE28	2,727.00				
31	Improvements	485	7,500.00				
May 20	"	503	3,000.00				
29	"	507	1,500.00				
31	Porter Ranch	JE36	4,012.50				
			65,578.70				65,578.70

741

850 The Witness:

The bookkeeper wrote the original record, under my direction. The next expenditure is shown by Exhibit 49, it shows notes payable, Highland Irrigation Company, Wichita Falls, and has to do with the credit side of the journal entries that were made, Nos. 28 and 27. Has to do with the ownership of the Wichita Royalty Company, in the Marlborough Addition.

Mr. Boone:

We offer that in evidence and ask that it be photostated.

(Instrument marked "Defendant's Exhibit 49" as follows:)

DEFENDANT'S EXHIBIT 49.

Name: Notes payable—Highland Irrigation Company.

Address: Wichita Falls, Texas.

Date	Items	Fol.	Debits	Date	Items	Fol.	Credits
1926				1926			
May 31		JE43	25,942.50	March 6	Due 1-2-3 years from 9-19-25, 8% interest due	JE27	23,215.50
					1-2-3 years from 1-8-27, 8% interest	JE28	2,727.00
			25,942.50				25,942.50

851 The Witness:

Exhibit No. 50, notes payable Highland Irrigation Company, and has to do with the transfer of the two notes to the Highland Irrigation Company, or series of notes. The bookkeeper wrote that in the ledger under my direction. It goes down to June 1, 1926. I knew during all that time that the Wichita Royalty Company was claiming half interest in the Marlborough Addition. Journal entry on Defendant's Exhibit 48 is No. 27, and the next is 28. No. 485 is the voucher check, which has been introduced in evidence, and also 503 and 507. Journal entry 26 is on the Porter Ranch. Journal entry No. 43, is offsetting entry for closing out the books for the particular period of the years, it says, "land in fee, credit $65,678.70," that was written in the journal of the Wichita Royalty Company by the bookkeeper under my direction, May 31, 1926. I knew then that the Wichita Royalty Company had bought, in fee, this particular property.

Mr. Rogers:

We object with reference to any matter other than the Marlborough Addition, for the reason that it is not the best evidence, there being no showing of any conveyance by G. W. Peckham to his trust, and it being a matter between the trustee individually and himself as trustee.

(Which objection was by the Court sustained, to which Defendant, J. T. Harrell excepted.)

The Witness:

I have had charge of those books since those entries were made, the books have been held in the of-
852 fice of Wichita Royalty Company, under my supervision as an employee of the Wichita Royalty Company. George Peckham did not tell me to do anything with that deed, other than to keep it secret. I thought a great deal of George Peckham, he was my friend.

Exhibit No. 50, represents Journal entry No. 1, dated June 1, 1926. Shows notes payable, land $2,762.50. Just above that one it shows $25,942.50. The writing on No. 1, shows "Notes payable Highland Irrigation Company, $25,942.50. That was written by the bookkeeper under my direction. I was heading up that as a liability against the Wichita Royalty in favor of the Highland Irrigation Company. It is a matter of record in the books. Mr. Peckham never told anything about the Marlborough Addition business to anyone or the Wichita Royalty Company business to anyone, and it was never made public by anybody in our office. He did not tell me to keep it a secret about charging it on the books of the Wichita Royalty Company, that the Wichita Royalty Company owed the Highland Irrigation Company $27,000.00 plus, that could not have been when we made the entries on the books. Mr. Peckham told me to keep those books away from anybody outside of us. Mr. Peckham was very cautious about it, careful to tell us always not to allow anybody to look at the Wichita Royalty Company books without first talking to him. I think the bookkeeper saw that deed, it was kept in the file in the safe, among the Wichita Royalty Company records.

The next journal entry, Exhibit 50, No. 39, does
853 not have anything to do with it, it says, May 31, 1927, notes payable to Highland Irrigation Company, $18,204.00, that is an offsetting entry closing out the year, May 31, 1927. The bookkeeper wrote that under my direction, in the books; I knew on May 31, 1927 that the Wichita Royalty Company owed the Highland Irrigation Company that much money. I will make an explanation. No. 50, account Highland Irrigation Company, it shows June 1, 1926, an entry of $23,215.50, on the credit side, and there is a notation written in there for our detailed information, due 1-2 and 3 years from 9-19-25, with eight percent interest, and there is another item on the same date, for the same amount, $2,727.00, which reads "Due 1, 2, 3 years from 1-8-27, eight percent interest, total of the two being $25,942.50."

I knew on May 31, 1927, the records of the Wichita Royalty Company showed that it owned a half interest in the Marlborough Addition; I further knew that prior to that time George Peckham had bought two of the lots out of the Marlborough Addition after it was platted, lots 1 and 2 in block 7. It was not planted until the deed, Defendant's Exhibit 45, was delivered. I think that George Peckham and I bought a string of lots together when the addition first formed, I think we bought the first lots that were ever sold in it, George took lots 1, 2, and 3, and I took four and five. I believe the whole transaction was in my name. I could not tell you when George Peckham started building. I build on my lots started in the spring of 1927—I am mistaken, mine was No-
854 vember 16, 1927. My recollection is that George Peckham's house cost $15,000.00 to $17,500.00, the original contract price, if I remember right, was sixteen and some odd thousand dollars. Then there were some changes made to increase it, I think it cost something over seventeen thousand dollars. My house cost me $9,800.00, and my contract was $7,500.00. Martin Litrell built my house, I don't know where he is now. Prior to the time George Peckham took out a permit to build this house, which in my name, he paid me some money, and after the house was started, made payments to the contractor. I do not remember those amounts. I do not have my bank statements. Originally I drew $300.00 per month from the company, then it was reduced to $200.00. George Peckham never gave me any money that I know of, he did write some checks to me, we were in deals together a number of times, real estate and oil deals. The first deal we had was a block of lots out there by the Catholic cemetery.

Mr. Rogers:

Let the record reflect an objection on behalf of Wichita Royalty Company, to an inquiry into the personal private transactions between strangers to the Wichita Royalty Company, relative to matters not related to or growing

out of any matter at issue in this case, and being transactions wholly between them as individuals, and it is encumbering the record and immaterial.

(Which objection was by the Court sustained, to which objection of the Court the defendant, J. T. Harrell then and there excepted.)

855 The Witness:

George Peckham and I had several personal transactions. I did not do any work for George Peckham other than bookkeeper for the Wichita Royalty Company —when I first went to work for him, he had a little royalty Company, and afterwards it consolidated with the Wichita, and we organized another one in which George was the trustee, and I got some pay for handling that, I think it was $100.00 per month, not to exceed a year. I did not keep those books, that is for myself. I am a bookkeeper but have had very little training, I started bookkeeping about 1914.

I do not know what George Peckham gave me a check for $25.00 for on June 27, 1923, we might have been playing a little poker.

Mr. Boone:

We offer ledger sheet No. 50, and check, Exhibit No. 51, in evidence, reading as follows:

(Instruments marked Defendant's Exhibits 50 and 51.)

DEFENDANT'S EXHIBIT 50.

Name: Notes Payable.

Address: (Highland Irrigation Co., Wichita, Falls, Texas.)

Date	Items	Fol.	Debits	Date	Items	Fol.	Credits
1926				1926			
Aug. 2		525	4,000.00	June 1	Due 1-2-3 years from 9-19-25 8% interest due JE1		23,215.50
27		532	3,738.50				
1927					1-2-3 years from 1-8-27 8% interest.....		2,727.00
May 31	Transferred new ledger JE39		18204.50				
			25,942.50				25,942.50

856 DEFENDANT'S EXHIBIT 51.

Check, dated at Wichita Falls, Texas, 6-27-23. No. .... City National Bank of Commerce Pay to E. E. Scannell, $25.00. Signed by G. W. Peckham Indorsed E. E. Scannell. Stamped (2) The Security National Bank Clearink House Paid June 28, 1923, Wichita Falls, Texas. (Perforated) Paid 6-27-23.

The Witness:

I don't know whether George Peckham gave me $229.40 on August 30, 1923 or not, nor do I know what I did with the money. I will be glad to try to find out. I think I got it. It was Mr. Peckham's personal check.

Mr. Boone:

We offer it in evidence.

DEFENDANT'S EXHIBIT 52.

Check, Wichita Falls, Texas, August 30, 1923, No. .... City National Bank of Commerce 88/130 Pay to E. E. Scannell or Bearer $229.40. Signed by G. W. Peckham. Indorsed by E. E. Scannell (In pencil) Security Nat'l Bank 9-1-23. (Perforated) Paid 9-1-23. (Stamped) 2. E W S ..... W TC

The Witness:

I do not know what the check was for, dated November 26, 1923, from George Peckham to me in the amount of $400.00. That was out of Mr. Peckham's personal account, I guess. It is marked Paid. I indorsed it and got the money, I do not know what I did with it.

Mr. Boone:

We offer it in evidence.

857 DEFENDANT'S EXHIBIT 53.

Check, Wichita Falls, Texas, dated 11-24-1923 No. .... City National Bank of Commerce 88/130 Pay to the order of E. E. Scannell $400.00. (Signed) G. W. Peckham. Indorsed by E. E. Scannell and perforated paid 11-23-23.

The Witness:

I do not know what George Peckham gave me a check for $350.00 for, on December 8, 1923. I got the money, that is my indorsement, Mr. Peckham had some reason for giving it to me, and I will make an attempt to find out.

Mr. Boone:

We offer the check in evidence.

DEFENDANT'S EXHIBIT 54.

Check dated Wichita Falls, Texas, 12-8-1923 No. .... City National Bank of Commerce 88/130 (Stamped) "7" Pay to the order of E. E. Scannell $350.00. (Signed) G. W. Peckham, indorsed E. E. Scannell, (Perforated) Paid 12-8-23.

The Witness:

You now hand me a check payable to E. E. Scannell, signed by G. W. Peckham for $651.00 and the notation on it, Bowden interest sold to Shaw. I have no recollection of what that was for.

Mr. Boone:

We offer it in evidence.

DEFENDANT'S EXHIBIT 55.

Check Dated Wichita Falls, Texas, 2-20-24 No. .... City National Bank of Commerce 88/130 Pay to E. E.

Scannell, $651.83. Signed by G. W Peckham.
858 (In ink) Bowden Interest. Sold to Shaw. Indorsed E. E. Scannell. (Perforated) Paid 2-23-23. (Stamp) The Security National Bank Clearing House Paid Feb. 28, 1924.

The Witness:

I think I identified that for you in the previous trial, many of these transactions. I believe I had an interest in the Netherton, at one time, in a well drilled on that land. The check for $50.00, dated February 21, 1924, says interest in fifty acres Neatherton, sold to Newberry. I had something to do with that, but I don't recall exactly whether it was a commission or whether I sold some acreage, or whether Mr. Peckham purchased an interest I had in the well. I got the money.

Mr. Boone:

We offer it in evidence, as Defendant's Exhibit 56.

DEFENDANT'S EXHIBIT 56.

(Check) Dated Wichita Falls, Texas, February 21, 1924. No. .... City National Bank of Commerce 88/130. Pay to E. E. Scannell, $50.00, signed by G. W. Peckham. (In ink) Int. in 50 acres Netherton, sold Newberry Indorsed E. E. Scannell. (Perforated) Paid 2-25-24. (Stamped) "3" (Stamped) The Security National Bank Clearing House, Paid Feb. 25, 1924.

The Witness:

I remember the check dated February 2, 1924, which George Peckham gave me for $797.50, that was a deal in
859 which I was interested and this is part of my back. I don't recall just now what deal. I do not think the royalty company was interested in it. I deposited the money in the Security National Bank and will make an attempt to run it down.

Mr. Boone:

We offer the check in evidence, Defendant's Exhibit 57.

DEFENDANT'S EXHIBIT 57.

Dated Wichita Falls, Texas, 2-2-24 No. .... City National Bank of Commerce 88/130 Pay to E. E. Scannell, $797.50. Signed by G. W. Peckham. Indorsed by E. E. Scannell, perforated paid 3-11-24. (Stamped) "3" (Stamped) Security National Bank Clearing House, Paid Mar. 11, 1924, Wichita Falls, Texas.

The Witness:

On March 19, 1924, check for $2,000.00, my memory is that this was the return of money I had invested with Mr. Peckham in the purchase of the Wilson royalty, I put up $2,000.00 when they started to buy it. I will endeavor to find out about that. I had nothing to do with selling that royalty to the Wichita Royalty Company, knew nothing about the transactions, how they were made, and I put up the money when the deal was made, just to have an interest in it. I think I got some profits, probably $800.00 or $1,000.00, I am not certain, and don't remember when I got it, but it was after it was sold. The Wichita Royalty Company records will not show when the Wilson Royalty was bought, except by that company. The Wichita Royalty Company books show that on February 2, 1924, check No. 75, check No. 154, for
860 $12,000.00, was issued. On March 17, check No. 185, for $1,950.00 was issued. I think that was the last of the transaction, however, I don't remember. On March 19, I got $2,000.00, that check for $797.50 might be part of it.

Mr. Boone:

We offer the check in evidence, Defendant's Exhibit 58.

DEFENDANT'S EXHIBIT 58.

Wichita Falls, Texas Dated 3-19-1924 No. .... City National Bank 88/130, Pay to the order of E. E. Scannell $2,000.00. This check is in settlement as shown hereon. Acceptance by indorsement constitutes receipt. Signed G. W. Peckham, indorsed E. E. Scannell. Perforated Paid 3-20-24. (Stamped) Security National Bank Clearing House, Paid Mar. 20, 1924, Wichita Falls, Texas.

The Witness:
I do not know what George Peckham gave me $270.00 for on April 15, 1924, I got the money, I will endeavor to find out.

Mr. Boone:
We offer the check in evidence, Defendant's Exhibit 59.

DEFENDANT'S EXHIBIT 59.

Wichita Falls, Texas, Dated 4-15-1924 No. .... 11 City National Bank 88/130 Pay to the order of E. E. Scannell, $270.00. This check is in settlement as shown hereon. Acceptance by indorsement constitutes receipt.
861 Signed by G. W. Peckham. Indorsed E. E. Scannell. Perforated Paid 4-22-24. (Stamped) The Security National Bank Clearing House Paid Apr. 22, 1924.

The Witness:
I do not know what George Peckham gave me a check for $880.00 on April 15, 1925, for, I will endeavor to find out. I got the money.

Mr. Boone:
We offer it in evidence.

DEFENDANT'S EXHIBIT 60.

Wichita Falls, Texas, Dated 5-14-1924 No. .... 11 City National Bank 88/130 Pay to the order of E. E. Scannell $880.00. This check is in settlement as shown hereon. Acceptance by indorsement constitutes receipt. (Signed) G. W. Peckham. Indorsed by E. E. Scannell. Perforated Paid 4-22-24. The Security National Bank Clearing House paid Apr. 22, 1924, Wichita Falls, Texas.

The Witness:

I do not think George Peckham ever kept any kind of books for himself. I kept records to show what I got so I could settle with Uncle Sam. I don't know whether I still have all of my records or not. I don't remember whether George Peckham gave me a check for $80.00 on January 4, 1925 or not, it may have been for a little poker game some Saturday afternoon or something like that. I can find out. I got the money on that check.

Mr. Boone:

We offer it in evidence.

862 DEFENDANT'S EXHIBIT 61.

Wichita Falls, Texas, dated 1-24-1925 No. .... 88 130 11 The City National Bank of Wichita Falls "7" Pay to the order of E. E. Scannell $80.00. Signed by G. W. Peckham (Stamped) Pay City National Bank Of Commerce Wichita Falls, Texas Or Order P. B. M. Co. 12-12 (Perforated Paid 1-27-25 Indorsed by E. E. Scannell.

The Witness:

The check dated February 4, 1925, for $100.00, is one of a series of checks. I imagine that this is about the time that I started taking over and looking after the Tolowa Royalty Company, it was organized by George

Peckham and subsequently he dropped out and B. L. Fain became the president. I worked for Mr. Peckham from the start of that corporation. He gave me his personal checks and I got the money on them, however, I will attempt to find out definitely.

Mr. Boone:
We offer it in evidence as Defendant's Exhibit No. 62:

DEFENDANT'S EXHIBIT 62.

Wichita Falls, Texas 2-4-1925 No. .... City National Bank of Wichita Falls, Pay to the order of E. E. Scannell $100.00. Signed by G. W. Peckham. Indorsed E. E. Scannell. (Perforated) Paid 2-6-25 (Stamped) The Security National Bank Clearing House, Paid Feb. 6, 1925, Wichita Falls, Texas.

863 The Witness:
The check dated February 16, 1925, G. W. Peckham, in the amount of $50.35, I imagine is about like the other one, I will attempt to check up and find out about that.

Mr. Boone:
We offer it in evidence as Defendant's Exhibit 63.

DEFENDANT'S EXHIBIT 63.

Wichita Falls, Texas 2-16-1925 No. .... City National Bank of Wichita Falls "7" Pay to the order of E. E. Scannell. $50.35. Signed by G. W. Peckham. Indorsed by E. E. Scannell. (Stamped) City National Bank of Commerce, Wichita Falls, Texas. Perforated Paid 2-19-25. (Stamped) Perkins-Timberlake Co., or order. 265-265.

The Witness:

The check dated March 2, 1925, that G. W. Peckham gave me for $100.00, I am quite sure that is the second one, or at least one of the $100.00 payments that I received from George Peckham for looking after the Tolowa Oil Royalty Corporation. Up until January 1, 1925, I was drawing $300.00 from the Wichita Royalty Company. On February 1, 1925, he cut my salary to $200.00, and I took the Tolowa Royalty Corporation and he paid me for that personally. Somewhere about January 1, 1925, George Peckham cut his own salary from $500.00 to $400.00. For January, 1925, I received check No. 334 for $200.00 and George Peckham received check No. 338 for $400.00. Mr. Peckham cut his own salary, my salary was not really cut, I took on additional work.
864 The work of the Wichita Royalty Company was rather exacting, and done with a very small amount of help, the most help we ever had was one bookkeeper, a stenographer and myself. In 1925 I don't imimagine we had as much work with the Wichita Royalty Company as we had had. On April 21, 1925, George Peckham gave me his check for $100.00, I imagine that was on the Tolowa, I will look it up and attempt to find out.

Mr. Boone:

We offer the check in evidence, marked "Defendant's Exhibit 64".

DEFENDANT'S EXHIBIT 64

Wichita Falls, Texas, dated 4-1-25 No. . . . . City National Bank of Wichita Falls, pay to the order of E. E. Scannell, $100.00. Signed G. W. Peckham. Indorsed E. E. Scannell. Perforated paid 4-2-25. (Stamped) The Security National Bank Clearing House, Paid April 2. 1925, Wichita Falls, Texas.

The Witness:

On May 2, 1925, George Peckham gave me his personal check for $100.00 and I got the money.

Mr. Boone:

We introduce the check in evidence marked "Defendant's Exhibit 65."

DEFENDANT'S EXHIBIT 65.

Wichita Falls, Texas, dated 3-2-25 No. .... City National Bank of Wichita Falls, pay to the order of E. E. Scannell, $100.00. Signed by G. W. Peckham. Indorsed E. E. Scannell. Perforated Paid 3-4-25. (Stamped) The Security National Bank Paid Mar. 4, 1925, Clearing House, Wichita Falls, Texas.

865 The Witness:

As I have stated, Mr. Peckham gave me a check on May 2, for which I got the money.

Mr. Boone:

We offer it in evidence.

DEFENDANT'S EXHIBIT 66.

Wichita Falls, Texas, Dated 5-2-25, No. .... City National Bank of Wichita Falls, pay to the order of E. E. Scannell, $100.00. Signed by G. W. Peckham. Indorsed E. E. Scannell. Perforated paid 5-4-25 "3" (Stamped) The Security National Bank Clearing House paid May 4, 1925 Wichita Falls, Texas.

The Witness:

On June 1, 1925, George Peckham gave me his personal check for another $100.00, and I got the money on it.

Mr. Boone:
We offer it in evidence.

DEFENDANT'S EXHIBIT 67.

Dated Wichita Falls, Texas, 6-1-25 No. .... The City National Bank of Wichita Falls. Pay to the order of E. E. Scannell, $100.00, signed by G. W. Peckham. Indorsed E. E. Scannell, perforated (Paid 6-15-25) (Stamped) The Security National Bank Clearing House, paid June 17, 1925, Wichita Falls, Texas. "3".

The Witness:
On July 7, 1925 George Peckham gave me his personal check for $100.00 and I got the money on it, I think it was for the same job.

866 Mr. Boone:
We offer it in evidence.

DEFENDANT'S EXHIBIT 68.

Wichita Falls, Texas, 7-7-25 No. .... City National Bank of Wichita Falls, pay to the order of E. E. Scannell, $100.00, signed by G. W. Peckham. Indorsed E. E. Scannell, Perforated Paid 7-7-25 "3" (Stamped) The Security National Bank Clearing House Paid July 7, 1925 (in pencil) 290.54 Wichita Falls, Texas.

The Witness:
On August 1, 1925, George Peckham gave me his personal check for $100.00, on which I got the money, for the same thing.

Mr. Boone:
We offer it in evidence.

DEFENDANT'S EXHIBIT 69.

Wichita Falls, Texas, Dated 8-1-25 No. . ,.. City National Bank Wichita Falls, pay to the order of E. E. Scannell, $100.00. Signed by G. W. Peckham. Indorsed E. E. Scannell, perforated paid 8-3-25 "2" (Stamped) The Security National Bank, Clearing House Paid Aug. 3, 1925, Wichita Falls, Texas.

The Witness:
On September 10, 1925, George Peckham gave me his personal check for $100.00, on which I got the money, for the same thing.

Mr. Boone:
We offer it in evidence.

867 DEFENDANT'S EXHIBIT 70.

Wichita Falls, Texas, Dated 9-10-1925. No. .... The City National Bank of Wichita Falls, pay to the order of E. E. Scannell, $100.00, signed by G. W. Peckham, indorsed E. E. Scannell. Perforated paid 9-12-25. "3" (Stamped) The Security National Bank, Clearing House paid Sep. 12, 1925, Wichita Falls, Texas.

The Witness:
On October 1, 1925, George Peckham gave me his personal check for $100.00, on which I got the money. I think that was on the Tolowa, too.

Mr. Boone:
We offer it in evidence.

DEFENDANT'S EXHIBIT 71.

Wichita Falls, Texas 10-1-25, No. .... The City National Bank of Wichita Falls, pay to the order of E. E.

Scannell, $100.00, signed by G. W. Peckham, indorsed E. E. Scannell, Perforated Paid 10-5-25 "1". (Stamped) The Security National Bank Clearing house paid Oct. 5, 1925 Wichita Falls, Texas.

The Witness:

On October 31, 1925, G. W. Peckham gave me his personal check for $100.00, on which I got the money and I am sure it was for the Tolowa.

Mr. Boone:

We offer it in evidence, Defendant's Exhibit 72.

DEFENDANT'S EXHIBIT 72.

Dated Wichita Falls, Texas 10-31-25 No. .... The City National Bank of Wichita Falls, pay to the order
868 of E. E. Scannell, $100.00, signed by G. W. Peckham, indorsed E. E. Scannell. Perforated paid 11-3-25. (Stamped) Security National Bank Clearing House November 3, 1925, indorsement guaranteed, Wichita Falls, Texas. (In ink) 7,003.05.

The Witness:

During all of this time from January 1, up to November 1, 1925, my salary remained the same by virtue of giving me another set of books to keep, making $300.00. During this time George Peckham's salary was $400.00, and remained so until he died. Perhaps he was not giving all of his time to the Wichita Royalty Company, I don't know whether he got any pay out of the Tolowa or not.

On August 1, 1925, George Peckham gave me a check for $218.97, and it says, "Sale of lots." I imagine that is my part of the sale of one of those lots out there by the Catholic cemetery which we owned jointly.

Mr. Boone:

We offer it in evidence.

DEFENDANT'S EXHIBIT 73.

Dated, Wichita Falls, Texas, 8-1-1925 No. .... City National Bank of Wichita Falls, pay to the order of E. E. Scannell, $218.97. Signed by G. W. Peckham, indorsed E. E. Scannell. Perforated paid 8-3-25. "2" (Stamped) The Security National Bank Clearing House, August 3, 1925. Paid Wichita Falls, Texas.

869 The Witness:

I did not make lots of money out of George Peckham, I made money with him. You have introduced checks totaling $7,003.05 up to date. I will do my best to tell you what each of these checks were for and what services I rendered George Peckham for each one of them. I don't know whether that is all of the money I got out of George Peckham or not. We used to trade together, we bought and sold together. I did not keep any record or memorandum of my business, only for the purpose of income tax. On March 27, 1926, George Peckham gave me $400.00, and it shows a half payment on twenty lots, I imagine that is twenty, it is either twenty or two, I can't be certain. I got the money on it.

Mr. Boone:

We offer it in evidence.

DEFENDANT'S EXHIBIT 74.

Dated Wichita Falls, Texas, 3-27-26 No. .... City National Bank Wichita Falls, Pay to the order of E. E. Scannell, $400.00. One-half cash payment on 20 lots. Signed by G. W. Peckham. Indorsed E. E. Scannell. Perforated Paid 3-29-25. "2" (Stamped) Security National Bank Clearing House. Paid Mar. 29, 1926. Indorsement guaranteed, Wichita Falls, Texas.

The Witness:

I think that is for the first payment on the string of lots that George Peckham and I bought in the Marlborough Addition, they were bought in my name, as I recall. I can't tell you just when they were bought, whenever the Peckham boys and Mr. Harrell and Mr. Kemp
870 put it on, we were the first purchasers, as I remember, of any lots in that addition. On May 28, 1926, G. W. Peckham gave me $79.09 on those Marlborough lots, I am quite sure his proportionate part of the payment and the interest. I don't remember what I paid for those lots, I can find it on the Marlborough books, I suppose, I have my checks, but I am not certain, I will endeavor to find it.

Mr. Boone:

We offer the check in evidence.

DEFENDANT'S EXHIBIT 75.

Dated, Wichita Falls, Texas 5-28-26 No. .... The City National Bank of Wichita Falls, pay to the order of E. E. Scannell, $79.09. Signed by G. W. Peckham, Indorsed E. E. Scannell, perforated paid 6-3-26. "3" (Stamped) Security National Bank Clearing House Paid June 3, 1926, indorsements guaranteed, Wichita Falls, Texas.

The Witness:

I do not remember whether on June 15, 1926 George Peckham gave me a check for $1,000.00 or not, that has been ten years ago. I know I never committed any fraud, and I am quite certain there is no fraud involved in it. I will attempt to run it down.

Mr. Boone:

We offer it in evidence.

DEFENDANT'S EXHIBIT 76.

Check No. .... City National Bank. 88/130, Wichita Falls, Texas, 6-15-1926 Pay to the order of Cash
871 $1,000.00. Signed by G. W. Peckham, (Stamped) City National Bank "6" Wichita Falls, Texas. Indorsed E. E. Scannell. Perforated paid 6-12-26.

The Witness:
On June 26, 1926, George Peckham gave me $47.19, and it says payment on 3 lots on Marlborough Addition, $37.50 principal, $9.69 interest, and that would be perhaps half of the total payment that was made. I will endeavor to get my check.

Mr. Boone:
We offer it in evidence.

DEFENDANT'S EXHIBIT 77.

Dated Wichita Falls, Texas 6-26-26 No. .... City National Bank of Wichita Falls, Pay to the Order of E. E. Scannell, $47.19. This check is in full settlement as shown hereon. Acceptance by indorsement constitutes receipt. Payment on 3 lots on Marlborough Addition 37.50 principal 9.67 interest, total $47.19. Signed by G. W. Peckham. Indorsed E. E. Scannell. Perforated Paid June 28, 1926. (Stamped) Security National Bank Clearing House paid June 28, 1926, indorsements guaranteed, Wichita Falls, Texas.

The Witness:
I do not know whether George Peckham gave me $490.00 on July 26, 1926 or not. I will endeavor to trace it.

Mr. Boone:
We offer it in evidence.

872 DEFENDANT'S EXHIBIT 78.

Wichita Falls, Texas, 7-26-1926 No. .... City National Bank of Wichita Falls, Pay to the order of E. E. Scannell, $490.00. This check is in full settlement as shown hereon. Acceptance by indorsement constitutes receipt in full. (Signed) G. W. Peckham. Indorsed by E. E. Scannell, perforated Paid July 27, 1926. (Stamped) Security National Bank Clearing House Paid July 27, 1926. Indorsements guaranteed, Wichita Falls, Texas. "2".

The Witness:

On July 31, 1926, George Peckham gave me a check for $46.95, which was where we made a payment on the Marlborough lots, I am quite sure that is half of the payment made. The Marlborough books will reflect the payments, I am quite sure. I will attempt to get my checks and find out.

Mr. Boone:

We offer it in evidence.

DEFENDANT'S EXHIBIT 79.

Dated, Wichita Falls, Texas, 7-31-1926 No. .... City National Bank of Wichita Falls, Texas, Pay to the order of E. E. Scannell, $46.95. This check in full settlement as shown hereon, acceptance by indorsement constitutes receipt in full. Payment on Marlborough Lots. Signed by G. W. Peckham. Indorsed E. E. Scanneli, paid 8-2-26 (Perforated.) (Stamped) Security National Bank Clearing House Paid Aug. 2, 1926, Indorsements guaranteed. Wichita Falls, Texas.

873 The Witness:

On July 31, 1926, Mr. Peckham gave me a check for $179.19, which is a payment on pavement on Marlborough Lots. When we first bought these lots they

were unpaved and we had to pay in our proportionate part on the paving that was put down subsequent, I am quite sure my check doubled that amount, the Marlborough books will reflect the payment.

Mr. Boone:
We offer it in evidence.

DEFENDANT'S EXHIBIT 80.

Dated, Wichita Falls, Texas, 7-31-1926 No. .... City National Bank of Wichita Falls, Pay to the order of E. E. Scannell, $179.19. This check is in full settlement as shown hereon. Acceptance by indorsement constitutes receipt in full. Pavement on Marlborough lots. Signed by G. W. Peckham. Indorsed E. E. Scannell, perforated Paid 8-2-26. (Stamped) Security National Bank Clearing House paid Aug. 2, 1926. Indorsements guaranteed. Wichita Falls, Texas.

The Witness:
On August 28, 1926, $8,100.00, payable to E. E. Scannell, signed by G. W. Peckham, I am quite sure that that is the first payment to Mr. Allen, or the first two payments to Mr. Allen on the building of George Peckham's house. Mr. Peckham took out the permit on August 14, 1926. I think Mr. Peckham went to Colorado and left that $8,-100.00 with me, I don't know that I paid it out right then, but perhaps a little later. Then on October 2, 1926, is a check payable to me for $93.40. It says, two pay-
874 ments on Marlborough lots, and I am quite sure that that is his half of the check that I gave to the Marlborough Addition in payment of the lot, but it would be reflected on the Marlborough books, which I will get. My books will show for double that amount, I will try to find it.

Mr. Boone:
We offer it in evidence.

DEFENDANT'S EXHIBIT 81.

Wichita Falls, Texas 10-2-1926 No. .... The City National Bank of Wichita Falls, Pay to the order of E. E. Scannell, $93.40. This check is in full settlement as shown hereon. Acceptance by indorsement constitutes receipt in full. Two payments on Marlborough Lots. (Signed) G. W. Peckham indorsed E. E. Scannell "3" (Perforated) Paid 10-4-26. (Stamped) Security National Bank Clearing House Paid Oct. 4, 1926. Indorsements Guaranteed, Wichita Falls, Texas (Pencil) 532.32.

The Witness:

On November 16, 1926, I am quite sure G. W. Peckham gave me a check for $4,250.00, which was another check given in payment of the building of his house. On November 1, 1926, George Peckham gave me a check for $46.20, it shows payment on Marlborough Lots, and probably with reference to half of the payment that was made on that date on the Marlborough. It will be reflected on the Marlborough books. I will try and get my check which shows double that amount.

Mr. Boone:

We offer it in evidence.

875 DEFENDANT'S EXHIBIT 82.

Dated, Wichita Falls, Texas, 11-10-1926 No. .... The City National Bank of Wichita Falls, Pay to the order of E. E. Scannell, $46.20. This check in full settlement as shown hereon. Acceptance by indorsement constitutes receipt in full. Payment on Marlborough Lots. Signed G. W. Peckham, Indorsed E. E. Scannell Perforated Paid 11-10-26, (Stamped) Security National Bank Clearing House Paid Nov. 12, 1926. Indorsements guaranteed, Wichita Falls, Texas.

The Witness:
Going back to those two checks, one dated August 28, 1926, for $8,100.00 and one dated October 15, 1926 for $4,-250.00, making a total of $12,350.00, my memory is that the total amount was paid, it seems to me, $17,500.00 altogether. It may be less than that. I think I had a special account in the City National Bank that will reflect the payments made on that house.

Mr. Boone:
We offer both of these checks in evidence, marked "Defendant's Exhibits 83 and 84".

DEFENDANT'S EXHIBIT 83.

Dated Wichita Falls, Texas, 8-28-1926 No. .... City National Bank of Wichita Falls, Pay to the order of E. E. Scannell, $8,100.00. (Stamped) City National Bank "6" Wichita Falls, Texas. City National Bank "2" Wichita Falls, Texas. This check is in full settlement as
876 shown hereon. Acceptance by indorsement constitutes receipt in full. Signed by G. W. Peckham. Indorsed E. E. Scannell, Perforated Paid 8-31-26. (NSF).

DEFENDANT'S EXHIBIT 84.

Dated, Wichita Falls, Texas, 10-16-1926 No. .... The City National Bank of Wichita Falls, Pay to the order of E. E. Scannell, $4,250.00, This check in full settlement as shown here. Acceptance by indorsement constitutes receipt in full. Signed G. W. Peckham, (Stamped) City National Bank "8" Wichita Falls, Texas. Indorsed E. E. Scannell Perforated Paid 10-18-26.

The Witness:
On December 8, 1926, George Peckham gave me a check for $447.65, which was the planting of shrubs around his

home. It says, "Shrubs and plants" on the check. I will get my check where I paid it out. I got the money on it.

Mr. Boone:
We offer it in evidence.

DEFENDANT'S EXHIBIT 85.

Dated Wichita Falls, Texas, 12-8-1926 No. . . . . The City National Bank of Wichita Falls, Pay to the order of E. E. Scannell, $447.65. This check is in full settlement as shown hereon. Acceptance by indorsement constitutes receipt in full. Shrubs & Plants. (Signed) G. W. Peckham. Indorsed E. E. Scannell Perforated Paid 12-9-26.

The Witness:
The last bunch of checks that you have offered in evidence total $15,179.67, and I will find out what
877 each of those checks were and what I did with the money.
The check dated January 25, 1927, $137.85, says, "Three payments and interest on Marlborough Lots." I got the money on it and I imagine that is half of the payment that was made on the purchase of those Marlborough lots. The Marlborough books will reflect twice that size, and my checks will reflect that payment.

Mr. Boone:
We offer it in evidence.

DEFENDANT'S EXHIBIT 86.

Dated, Wichita Falls, Texas 1-25-1927 The City National Bank of Wichita Falls, Pay to the order of E. E. Scannell $137.85. This check is in full settlement shown hereon. Acceptance by indorsement constitutes receipt in full. 3 payments and interest on Marlborough lots.

Signed G. W. Peckham. Indorsed E. E. Scannell Perforated Paid 1-26-27 "3" (Stamped) Security National Bank, Clearing House Paid Jan. 26, 1927, indorsements guaranteed, Wichita Falls, Texas.

The Witness:

The check of February 7, 1927, $175.00, was to pay for landscaping, I am quite sure I gave Preston a check for that amount, however, that does not seem to be my signature on the back of that check. I would not be able to say I got the money. It says, "Deposited to the City National Bank of Wichita Falls, to the credit of E. E. Scannell." I guess I got it, it was paid for that purpose, I am quite sure.

Mr. Boone:

Offer it in evidence.

878 DEFENDANT'S EXHIBIT 87.

Dated, Wichita Falls, Texas Feb. 7, 1927 No. .... The City National Bank of Wichita Falls, Texas, Pay to the order of E. E. Scannell, $175.00. This check is in full settlement as shown hereon. Acceptance by indorsement constitutes receipt in full. To pay Preston for landscaping. Signed by G. W. Peckham. Indorsed Deposited In The City National Bank of Wichita Falls, Wichita Falls, Texas, to the order of E. E. Scannell. Perforated Paid 2-7-27.

The Witness:

On March 27, 1927, George Peckham gave me a check for $27.00, it says, "For trees in Marlborough." I am quite sure that is a check for half of the purchase price. I gave one double that amount.

Mr. Boone:

Offer it in evidence.

DEFENDANT'S EXHIBIT 88.

Dated, Wichita Falls, Texas 3-27-1927 No. .... The City National Bank of Wichita Falls, Texas, Pay to the order of E. E. Scannell $27.00, This check is in full settlement as shown hereon. Acceptance by indorsement constitutes receipt in full. Trees in Marlborough. Signed G. W. Peckham. Indorsed E. E. Scannell. Perforated Paid 3-25-27 "3" (Stamped) Security National Bank Clearing House Paid Mar. 22, 1927. Indorsements guaranteed, Wichita Falls, Texas.

879 The Witness:

On June 14, 1927, a check in the amount of $169.14. Says, "Paving Avenue L lots," $169.14, and that is a part of the pavement payment on the block of lots we had at the Catholic cemetery. I gave my check for twice that amount, I am quite sure and I will try to find it.

Mr. Boone:

We offer it in evidence.

DEFENDANT'S EXHIBIT 89.

Dated, Wichita Falls, Texas, 6-14-1927 No. .... The City National Bank of Wichita Falls, Pay to the order of E. E. Scannell, $169.14. (Paving on L lots) Signed by G. W. Peckham. Indorsed E. E. Scannell. Perforated Paid 6-14-27. "8".

The Witness:

On November 1, 1927, George Peckham gave me his check for $147.24, and it says three payments and the interest to date on Marlborough lots. I am quite sure that that is half of a payment that was made on the lots that we have in the Marlborough Addition, and the books of the Marlborough will reflect the payment of twice that

much, I gave my check for twice that amount I am quite sure, to the Marlborough Addition.

Mr. Boone:
We offer it in evidence.

DEFENDANT'S EXHIBIT 90.

Dated, Wichita Falls, Texas 10-1-1927 No. .... The City National Bank of Wichita Falls, Pay to the order of E. E. Scannell, $147.24, 3 payments & int to date on 3 Marlborough lots. (Signed) G. W. Peckham Indorsed
880 E. E. Scannell, Perforated Paid 10-2-1927 (Stamped) Security National Bank Clearing House, Paid Oct. 3, 1927. Indorsements guaranteed, Wichita Falls, Texas.

The Witness:
On October 1, 1927, George Peckham gave me a check for $39.00, and it says, for hydrants in Marlborough. After we planted those trees, we had to water them, so we had to put in some hydrants and this is a check given for his half interest in the expense. I have my one-half and I am quite sure my check will show double the amount.

Mr. Boone:
We offer it in evidence.

DEFENDANT'S EXHIBIT 91.

Dated, Wichita Falls, Texas, 10-1-1927 No. .... The City National Bank of Wichita Falls, pay to the order of E. E. Scannell, $39.00. Hydrants in Marlborough. Signed by G. W. Peckham. Indorsed E. E. Scannell. Perforated Paid 103-1927 Security National Bank Clearing House Paid Oct. 3, 1927. Indorsements Guaranteed. Wichita Falls, Texas.

The Witness:

On October 3, 1927, George Peckham gave me his personal check for $200.00, it shows payment on Marlborough lots. I am quite sure that that is his half of the payment of $400.00 that should reflect on the Marlborough books. I am quite sure I paid double that amount, and I will attempt to get every one of these checks.

881 Mr. Boone:

We offer it in evidence.

DEFENDANT'S EXHIBIT 92.

Dated, Wichita Falls, Texas, 10-3-1927 No. ..... The City National Bank of Wichita Falls, pay to the order of E. E. Scannell $200.00, signed G. W. Peckham. Payment on Marlborough Lots, indorsed E. E. Scannell. Perforated paid 10-3-27. (Stamped) Security National Bank Clearing House Paid Oct. 4, 1927. Indorsements guaranteed. Wichita Falls, Texas.

The Witness:

On March 21, 1928, George Peckham gave me his check for $403.63. That is on the Marlborough lots, and I am quite sure that that is half of a payment that we made on that string of lots in the Marlborough Addition. I gave double the amount. I will make an attempt to get every one of these checks.

Mr. Goone:

We offer that in evidence.

DEFENDANT'S EXHIBIT 93.

Dated, Wichita Falls, Texas, 3-21-1928. No. ..... The City National Bank of Wichita Falls, Pay to the order of E. E. Scannell $403.63, on Marlborough lots. Signed G.

W. Peckham, indorsed E. E. Scannell. Perforated Paid 3-22-28. (Stamped) Security National Bank Clearing House. Paid Mar. 22, 1928. Indorsements guaranteed. Wichita Falls, Texas.

The Witness:

These last checks total $1,298.86, and I will at-
882 tempt to get my records and explain each of them.

The records will show in whose name the lots next to the Catholic Cemetery were taken, we sold them off. Mr. Peckham was giving me his check as late as 1927, I believe the last one in 1928, I think I still had two in George Peckham's name when he died, and we got title to them. I don't know that I conveyed them to him, we were partners on that deal, but I think that the conveyance was made from Mr. Kemp to George Peckham. The lots in the Marlborough Addition were in my name, I had a home built on one and a half of them, and I conveyed them at different times. I will get my records with reference to the lots of the Marlborough Addition. George Peckham built on three of them. The Marlborough books will reflect those transactions. We divided that property before George Peckham died. I did not owe George Peckham anything.

The check of June 16, 1926, for $974.15, says final payment lots 1 and 2, block 7, Marlborough Addition, and lots 1 and 2 in block 7, I presume, are the lots on which George Peckham built his home. The memorandum on the bottom of this check looks like it is in my handwriting, and I imagine was put there when the check was delivered to me. It is not in George Peckham's handwriting, it is in pencil. The balance of the check is in ink, in George Peckham's handwriting. I probably put that on there while I was sitting right in front of Mr. Peckham.

Mr. Boone:

We offer the check in evidence and ask that it be photostated.

883 DEFENDANT'S EXHIBIT 94.

(Check) Wichita Falls, Texas, 6-15-1926. No. ..... The City National Bank of Wichita Falls. Pay to the order of E. E. Scannell $974.15. (Signed) G. W. Peckham. Final payment lots 1, 2 and 7, Marlborough Add. (Perforated) Paid 6-16-26. Indorsed E. E. Scannell.

The Witness:

On June 28, 1926, check for $821.97, shows paving on Lots 1 and 2 in block 7, Marlborough Addition, and that is the paving on payment made on two lots on which his home is built. I feel quite sure this paving was being done about that time, and I made the payment and this was clearing it up, for his part payment on the lots on which he built his home. I don't know whether my check would be double that amount or not. You see, that is on the two on which he built his house, if he paid the full amount of that other check, the chances are that is just what was due. I paid for the pavement in front
884 of my lot, I will endeavor to get my check.

Mr. Boone:

We offer the check in evidence, Defendant's Exhibit No. 95.

DEFENDANT'S EXHIBIT 95.

Dated, Wichita Falls, Texas, 6-28-26. The City National Bank, Wichita Falls, pay to the order of E. E. Scannell, $821.97. This check is in full settlement as shown here. Acceptance by indorsement constitutes receipt in full. Paving on lots 1-2 blk 7, Marlborough Addition. (Signed) G. W. Peckham, E. E. Scannell indorsed the check. Perforated Paid 6-30-26. (Stamped) Security National Bank Clearing House Paid Jun 30, 1926. Indorsements guaranteed, Wichita Falls, Texas.

The Witness:
On November 10, 1926, George Peckham gave me a check for $2,500.00, I imagine that was on his home in the Marlborough Addition.

Mr. Boone:
We offer the check in evidence.

DEFENDANT'S EXHIBIT 96.

Dated, Wichita Falls, Texas, 11-10-1926, No. ..... The City National Bank of Wichita Falls, Texas "8." Pay to the order of E. E. Scannell $2,500.00. Signed G. W. Peckham. Indorsed E. E. Scannell. Perforated Paid 11-12-26. On house.

The Witness:
On November 24, 1926, George Peckham gave me another check for $1,750.00, another payment on the house, along with the other three. This house
885 did not cost more than $16,500.00. This looks like an additional amount that was paid for the tile roofing.

Mr. Boone:
We offer it in evidence.

DEFENDANT'S EXHIBIT 97.

(Dated, Wichita Falls, Texas, November 24, 1926, No... The City National Bank of Wichita Falls. Pay to the order of E. E. Scannell, $1,750.00.

This check is in full settlement as shown hereon. Acceptance by indorsement constitutes receipt in full. On house. Signed G. W. Peckham, indorsed E. E. Scannell. Perforated paid 11-26-26.

The Witness:

That makes four house checks. I don't know how much more the house cost. I had very little to do with it, other than that the thing passed through my name as a convenience, the Marlborough Addition, as to publicity, to show that there was houses being built out there by others than the owners of the property. I will endeavor to get my checks where I spent that $16,500.00. On February 19, 1927, there is another check George Peckham gave me for $4,370.40, another payment on the house, it says, "Marlborough House." I guess that is the final payment, it cost more than $20,000.00, he told me at one time it cost more than that, he said it cost him nearly $24,000.00.

Mr. Boone:

We offer the check in evidence.

886 DEFENDANT'S EXHIBIT 98.

Dated, Wichita Falls, Texas, 2-19-1927. No. ..... The City National Bank of Wichita Falls. Pay to the order of E. E. Scannell, $4,370.40. This check is in full settlement as shown hereon. Acceptance by indorsement constitutes receipt in full. On Marlborough House. Signed G. W. Peckham. Indorsed E. E. Scannell. Perforated paid 2-23-27. (Stamped) Security National Bank Clearing House Feb. 23, 1927. Paid. Indorsements guaranteed. Wichita Falls, Texas.

The Witness:

On that house he gave me checks totaling, altogether, $20,970.00. I could not say that on January 13, 1927, my wife and I executed a deed to George Peckham, recorded in volume 279, page 50, Wichita County, Texas, and reciting that I had only paid $13,500.00 on this house.

Mr. Boone:

We offer in evidence the deed, Volume 278, page 50, deed records of Wichita County, Texas, which recites.

$13,500.00 cash paid to E. E. Scannell and $12,000.00 worth of notes.

(Marked "DEFENDANT'S EXHIBIT 99" and appearing in this record as Defendant's Exhibit 109, as hereinafter shown.)

The Witness:

I do not know that there was any difference between the $16,000.00 and the $13,500.00; all the payments I ever got were turned over to my account to the building of that house. I did not know I signed a deed on February 14, 1929, to George Peckham for that amount.

887 I want to refresh my memory a little bit on this thing. I notice on this check for $8,100.00 an item of "insufficient." Since I recall it, I am not sure just how it was done, but George went off hunting, or to Colorado, along in August, and it seems to me that he lacked a certain amount of money having enough in his account to pay that check. I remember shuffling around here with Mr. Basham quite a little bit. I had already given one check on that house and the other was due and I had given two of them and the check for $8,100.00 was insufficient, and something was done down there, I think the bank carried him, I am not quite sure about that, I think the bank can tell you more about that than I can. I think the contract on that house recited that there should be four payments of $4,250.00 each. If you will get the deed it might help me to refresh my memory as to the details of the transaction. George Peckham trusted me and I trusted him. I don't know who I transferred those notes to. I don't know whether the notes for $12,000.00 were made payable to me or not. I transferred the property out of my name to somebody, I don't remember who. I do not remember transferring the notes to the Empire Mortgage Company on April 20, 1927. I am quite sure there was no shortage in that house deal, as far as I am concerned.

I begun building my house about November 16, 1927. I had some of the money with which to build it and borrowed some money. I will endeavor to give you my bank account of November, 1927 also from
888 1923 until this lawsuit was filed.

I got some money from the Pan-American Life Insurance Company at New Orleans to build my house.

Check No. 455, is the check of the Wichita Royalty Company, dated January 5, 1926, to E. E. Scannell, for $200.00, signed Wichita Royalty Company, by E. E. Scannell, and so indorsed; that was my salary for December, 1925.

I have a check here, No. 462, for $1,200.00, being a check drawn on Wichita Royal Company's account in the City National Bank of Wichita Falls, signed Wichita Royalty Company, by E. E. Scannell, and indorsed by E. E. Scannell. I got that money temporarily about that time Mr. Hopkins, who was the collector in Dallas, sent a young man up here and told him to collect some stamp taxes, capital stock taxes, and he came over there, he was a young fellow, and rearing to make a name for himself. His name was Lillibridge I will never forget the fellow. He had a Charlie Chaplin mustache, and he was hot to make a showing. We came over and talked to Mr. Crouch and Mr. Sheppard, told him what was in the air, that this fellow was pushing us. They said to get the money out of the bank as quick as we could, because he was sure to jump on it. We drew the balance out of the account at that time for a few days until we could get a chance to figure with him. His idea was to tie up the money and then figure. I probably put that $1,200.00 in my personal account, I will be glad to get it for you if I can locate it. I put this money back that year—
889 shortly thereafter it was replaced in the bank.

I don't know exactly what date it was replaced. Check No. 462 shows, to advance on salary for 1926.

Mr. Boone:
We offer the check in evidence, Defendant's Exhibit 100.

DEFENDANT'S EXHIBIT 100.

Wichita Royalty Company, Wichita Falls, Texas, No. 462, January 16, 1926. "18." When properly indorsed pay to the order of E. E. Scannell, $1,200.00. To the City National Bank, Wichita Royalty Company, Wichita Falls, Texas. By E. E. Scannell for trustee. Indorsement hereon by the payee constitutes acknowledgment of full payment of the items listed on accompanying remittance statement. No other receipt required. Indorsed E. E. Scannell. Perforated Paid 1-18-29.

The Witness:
The next check is No. 463, the same date, this check was cashed, 462, there was another check written by me, signed Wichita Royalty Company and payable to E. E. Scannell for $300.00, and indorsed and paid the same day, for the same thing.

Mr. Boone:
We offer it in evidence.

DEFENDANT'S EXHIBIT 101.

Wichita Royalty Company, Wichita Falls, Texas, January 18, 1926. No. 463. When properly indorsed pay to the order of E. E. Scannell $300.00. To Security
890 National Bank, Wichita Royalty Company, Wichita Falls, Texas, by E. E. Scannell, for trustee. Indorsement hereon by the payee constitutes acknowledgment of full payment of the items listed on accompanying remittance statement. No other receipt required. Indorsed E. E. Scannell. Perforated paid 1-18-26.

The Witness:
That voucher was for salaries to advance on salaries, 1926, $300.00.

The next, dated January 19, check No. 462, for $400.00, signed Wichita Royalty Company, payable to E. E. Scannell, endorsed by E. E. Scannell, was for the same thing. I imagine that those checks were all cashed at the same time. You will notice that one of these was drawn on the account that we had at the City National Bank and the other on the account that we had at the Security National Bank, both cashed on the same day, I couldn't say about that. Check No. 463 was drawn on the Security National Bank, and check No. 462, on the City National Bank I could not tell you whether the $1,200.00 drew out the entire balance in the City National Bank or not, nor could I tell you whether the $300.00 drew out the entire account in the Security National Bank. It is true, on January 16, I wrote a check to draw out my balance of the bank, to keep it from being garnisheed and I did not cash it until the 18th; on the 19th I wrote a check for $400.00 and did not cash it until the 20th of the City National Bank. I will get the record and see how much money we had in the City National Bank

891 Mr. Boone:
We offer the check in evidence.

DEFENDANT'S EXHIBIT 102.

Wichita Royalty Company, Wichita Falls, Texas, No. 464, January 19, 1926. "18" "17" When properly indorsed pay to the order of E. E. Scannell $400.00 To the City National Bank, Wichita Royalty Company, Wichita Falls, Texas, by E. E. Scannell, for trustee. Indorsement hereon by the payee constitutes acknowledgment of full payment of the items listed on accompanying remittance statement. No other receipt required. Indorsed E. E. Scannell. Perforated Paid 1-20-26.

The Witness:

I have my records before me, and can explain these checks, beginning with 462, 463 and 464. It shows here that on No. 157, from the memo, we deposited back, E. E. Scannell, salary advances to Security National Bank, $700.00, February 2, 1926. As to these three checks, we asked the City National Bank to give us the deposit slips of all the deposits they have, and they have not done it. On the City National Bank it shows, in the Security, that we deposited $700.00 on February 10, No. 158, our cash memo. There was $1,200.00 deposited to the City National Bank. I will have to check further, and $3,287.22 on the same cash memo, which is the deposit of that money back, it says, E. E. Scannell, salary advance on the books. I had all of the money there was in our account out at that time, and held it, and that is the re-
892 placing of it, as I remember. I presume the check for something over three thousand dollars is a cashier's check, it shows the deposit to the City National Bank was $3,287.32, so that when the money was returned on cash memo 158 to the account, it was $3,287.22 deposit and also check for $1,200.00. This memo 155 is pipe line runs, oil runs, telephone account, and others. On check No. 158, it says, E. E. Scannell salary advance, $3,287.32, and it refers on the ledger to C. M. R. and 155. It is possible that there is a cashier's check issued to that amount to us, I will attempt to get it for you, and that is the return of the money.

Mr. Boone:

We offer in evidence the original record of the cash received, memo No. 158, being Exhibit No. 103, and the same book memo, No. 155, being Exhibit 104, which the witness has testified to, concerning the two deposits of $3,287.22, and ask that both instruments be photostated.

(Marked "Defendant's Exhibit 103 and 104," as follows:)

893 DEFENDANT'S EXHIBIT 103.

No. 158.

Original record of cash received February 10, 1926.
From oil runs and E. E. Scannell.
Account:

Description of Cash Items.

Received in payment of:

Transfer fees	2.25
E. E. Scannell, salary advances	1200.00
E. E. Scannell, salary advances	3287.22
Oil runs	2593.93

The above listed cash items received by me and passed to R for deposit.

DEFENDANT'S EXHIBIT 104.

No. 155.

From Pipe Line Cos. January 21, 1926.
Account: Description of cash items.
Received in payment of:

Oil runs	3283.02
(E. E. Scannell, Trus.) Telephone account	2.30
Transfer fees	1.90
	3287.22

The above listed cash items received by me and passed to R for deposit.

894 The Witness:

I don't know how much money we had in the City National Bank when we drew out our account to keep the revenue collector from garnisheeing it, I will have to find out. The record here shows on January 15, 1926, we had $2,408.53; on January 18, we had $2,406.03. On January 20, we had $36.96. We had $436.96 at the close of business January 18, and on the 19th there was a $400.00 withdrawal. On January 18, it shows $15,000.00 deposited, which I presume is a loan. The bank account shows that we gave a check for $15,769.07, so it was in and out the same day. I do not have the Security National Bank Account. I think all of these things were in the record in the first trial. The suit was filed in 1931, and I have been working on it most of the time since then. We have had a special auditor and I have been working on this case for about three months. Our auditor is Mr. Sheppard. Many of these things we have not been able to locate. I did not know the questions you were going to ask.

On January 30, 1926, there was some oil payments for oil runs, the first half of January on the Stephens Royalty given to the Wichita Royalty Company by G. W. Peckham for $1,235.00, also a cash memo covering check for $1,103.13—I am unable without the deposit slip, to identify these deposits in the bank individually.

Mr. Boone:

We offer in evidence these two checks from George Peckham to Wichita Royalty Company, marked "Defendant's Exhibits 105 and 106 as follows:)

895 DEFENDANT'S EXHIBIT 105.

Wichita Falls, Texas, dated 1-30-1926. No. ..... The City National Bank of Wichita Falls pay to the order of Wichita Royalty Co., $1235.99. Runs first half January, Stephens Royalty. (Signed) G. W. Peckham. (Stamp-

ed) for deposit only, G. W. Peckham as Trustee, Wichita Royalty Company, 509 Security National Bank Building, Wichita Falls, Texas. (No penned indorsement appears.) Perforated paid 2-10-26.

DEFENDANT'S EXHIBIT 106.

Dated, Wichita Falls, Texas, 2-18-1926. No. .... City National Bank. Pay to the order of Wichita Royalty Company $1,103.13. Last half January, Stephens Royalty. (Signed) G. W. Peckham. (Stamped) For deposit only, G. W. Peckham, as Trustee Wichita Royalty Company, 509 Security Nat'l Bank Bldg., Wichita Falls, Texas. (No penned indorsement appears.)

The Witness:

I handled the Wichita Royalty Company business under George Peckham's direction. I drew out their money at his request, and held it at his request. I wrote the check and indorsed it, I had authority at the bank to write checks on the Wichita Royalty Company. George Peckham trusted me. From 1923 until the da[illegible] that Mr. Peckham died, I wrote most of the checks on the Wichita Royalty Company, however, before any checks were written that amounted to anything. Mr. Peckham
896 knew all about it, and it was done at his request.

George Peckham was rather prominent and rather active in this community, a good business man, and had the reputation of being honorable. I never heard anyone question George Peckham's integrity or honesty prior to the time he died. I do not question his honesty in regard to this, the record will reflect for itself—the records reflect fraud. I have accused George Peckham of not making a delivery of a deed to me to the Marlborough Addition. I have testified several times that George Peckham signed that deed and acknowledged it before me, and gave me verbal instructions only pertaining to it. He never gave me any written instructions in

my life. George Peckham wrote this letter which you now hand me, that is the first time I ever recall having seen it. If I have the original of this letter in our file, I will hunt it up. I will go and get the letter right now and Mr. Carson may go with me.

Mr. Boone:

We offer the letter in evidence and ask that it be photostated.

DEFENDANT'S EXHIBIT 107.

897 Wichita Royalty Company

509 Security National Bank Building

Wichita Falls, Texas, April 10, 1926.

Wichita Royalty Company,
406 Staley Building,
Wichita Falls, Texas.

Gentlemen:

This is to certify that you are the owners of an undivided half interest in the Marlborough Addition (consisting of 252 lots) to the city of Wichita Falls, subject to 1/2 of six notes for $7,738.50 each, payable in 1, 2 and 3 years; also subject to 1/2 of 6 notes for $909.00 each, payable in 1, 2 and 3 years.

While one-half of Marlborough Addition belongs to Wichita Royalty Company it is held in my name because of the fact that the other owners would not care to be associated with a stock company, but are willing to be partners with me as an individual. I will continue to hold this property in my name, but am giving you this letter showing your interest so that in the event anything should happen to me you will be protected.

I am also enclosing a deed to you for your interest, which you can file for record if it becomes necessary.

Yours very truly,

(Signed) G. W. PECKHAM.

(On bottom of letter):

6 notes	7,738.50	46431.00
6 notes	909.00	5454.00
		2/51885.00
		$5942.50

898 The W ..ess:

I have that letter now, I found it in an envelop in the Marlborough file. It is dated April 10, 1926, and has been in my possession since that time. Those figures on this letter are mine, and I possibly wrote those figures on there at the time I got the letter. That is probably on Journal entries 27 and 28, it is probable that these journal entries might have been made out from that information. George Peckham made a delivery of that deed to the company, not to me. I have accused him of fraud. In this letter in the last paragraph he says, I am enclosing a deed to you for your interest, which you can file for record if it becomes necessary. I had forgotten all about this letter. I still make my testimony just as I made it in the first place, that the deed was given to me not to file but to hold, the letter says, "if anything should happen to me, you will be protected." When I testified this morning, I did not know that this letter was in my possession. That letter was kept with the deed in the envelop, I think they have been kept together all the time. I have not had that deed since the last trial of this case, when I brought it to the courthouse. I do not expect I would ever have told you about this letter if you had not found it, because I didn't know anything about it, I had forgotten all about it. It is written on the stationery of the Wichita Royalty Company, and I suppose the letter

was delivered to me along with the deed, when I took George Peckham's acknowledgment, but I would not say for sure. If I had known about this letter, I would have testified about it, I am not trying to hide anything, I am only looking after the interests of the stockholders of the Wichita Royalty Company to the best of my ability and that is what I told Mr. Harrell in the first place. I am contending that there was no delivery of this deed. This letter does not say that the deed could be put of record any time it became necessary.

899

Mr. Rogers:

We make the further objection, in addition to the objections carried forward through the testimony, as to the Marlborough Addition, with respect to delivery, primarily, for the obvious reason that there could be no delivery of a deed between G. W. Peckham and the Wichita Royalty Company, because there was no one to accept the same, except the grantor therein. No other person having any authority of any kind or character to bind the trust by the acceptance of a deed, and the trustee himself, the grantor in the deed, being wholly without power to bind the trust in the acceptance of a deed himself, concerning subject matter foreign to the limited powers given by the declaration of trust which chartered its powers. And for the further reason that it is now apparent from the letter itself, being Defendant's Exhibit 107, that the grantor did not intend that the deed should be delivered, nor that title should pass unless and until he should die, and in no event prior to his death or prior to his subsequent instruction, should the deed be delivered, and as a matter of law, with his death, died, the effect of that deed, it not having been delivered prior to his death and it being impossible to deliver it after his death, in order to find G. W. Peckham.

900

(Which objection was by the Court overruled, to which the defendant then and there excepted.)

The Witness:

This letter does not say anything about Mr. Peckham's death, it is addressed to the Wichita Royalty Company and signed by George Peckham. I should have known about this letter, but I had forgotten about it being in existence. I never told anybody about the deed until after George Peckham's death. After this deed was executed, it was available in the records of the Wichita Royalty Compnay and George Peckham could have gotten it at any time he wanted to. All of the books and records of the Wichita Royalty Company were in my custody under George Peckham's direction. I recited on our records that the Wichita Royalty Company owned all of the Marlborough Addition. The notation on that letter is figuring out our half interest full amount of the payment of $36,000.00, which was for the entire addition, and the note, $5,454.00, our half of it—I mean by our half, Wichita Royalty Company. I couldn't say for sure, but the deed was turned over to me with this letter, I think, for safekeeping, I kept all of the records. The records show that there was some deeds we did not have. As I recall, after George Peckham's death, they tried to get me to sign a deed, but I don't think I ever did, probably I did, and did not turn it in—I signed it and acknowledged it and held it in my desk, that was about the time I begun to wake up and find out what was being done to me.

I signed this on March 29, 1930, and acknowl-
901 edged it on the same day, before J. R. Terrell, a notary public, who worked for Bill Peckham and Ross Robertson. (Plaintiff's Exhibit No. 47.)

I never did think the Marlborough Addition looked "pretty good," after the acquisition of it by this deed of April 10, 1926. I bought lots out there because George Peckham wanted me to, he thought I would make some money.

Mr. Rogers:

So there will be no mistake about the record, under the agreement, the objection heretofore made with respect

to the Marlborough Addition, and the W. H. Peckham transaction in respect to it, I want to make the same objection in respect to any transaction or transactions which Mr. Scannell as trustee, with he may have had, and it may be agreed that those objections may apply?

Mr. Boone:
Yes.

Mr. Humphrey:
That is all right.

The Witness:
The Marlborough Addition belonged to the Wichita Royalty Company as far as I knew. I don't know what the rights were as far as the legal end of it was concerned. I knew that they had a deed, and that they had spent lots of money out there—whether they had a deed or not, I knew they had a string to it, the deed was never recorded. I feel quite confident I followed the instructions that were given to me, had I not been used to doing that. I don't think I could have worked for George Peckham, he was not that kind of a fellow. After George Peckham died and I qualified as trustee, I came
902 to Mr. Harrell and asserted ownership for the Wichita Royalty Company for a half interest in the Marlborough Addition and thereafter paid money out of the funds of the Wichita Royalty Company to carry forward the Marlborough Addition.

Q. Accepted stock of the Texas Investment Company, didn't you?

Mr. Rogers:
We object to that, because a trustee, under the declaration of trust here involved is without power or authority to bind the shareholders by the acceptance of stock in a corporation; particularly in respect to a corporation

which has chartered purposes and actual negotiations, relate not to oil and gas, but solely to a suburban venture.

The Witness:

I accepted that stock, and sat in the meetings of the Texas Investment Company on behalf of the Wichita Royalty Company, and voted. The records reflect what I did better than I can tell you, because I didn't know much about what it was all about, I was not associated with it close enough to know what was going on and what had been done. I kept books in so far as our part of it was concerned. The Marlborough Addition was an outside project handled by Mr. Peckham in his office and Mr. Harrell in the bank, and the men he had working for him, and I knew nothing about it, outside of the entries that directly affected the bank account of the Wichita Royalty Company. I set up the books and started them off for the Marlborough Addition, when I say

903 I, I mean E. E. Scannell, and the kid that worked for me came over at night time and set it up for me, under my direction. They didn't have any kind of records they could tell anything about, and he wanted to see something about it, so that he could tell a little about what was being done. I think that was soon after the Marlborough property had been bought—I knew then the situation concerning the Marlborough purchase. The books will reflect when they were started. It went along for a time under the Peckham boys, Mr. Harrell and Mr. Kemp. My impression is that we probably did that long before the Wichita Royalty Company came in, but I couldn't say for sure. I kept what each item was spent for, in so far as it was reflected on the books. The journal entries, was some information I acquired from Mr. Peckham, I would go and see him and he would tell me what checks to make and what to charge them, too. I don't know whether those entries are the truth or not, I don't know what they paid out, I don't know how much they paid out for water, lights and gas. I had no reason to doubt George Peckham, I am quite sure

that he told the truth in some respects—he probably did not exactly not tell me the truth but he did not detail it, in other words. I cannot give you any specific instance when George Peckham did not tell me the truth. The records reflect fraud on the part of George Peckham. I had forgotten all about this letter, but if anybody had gone to the records, it would have been there with my figures on it. In regard to the expenditure of our half interest on the Marlborough Addition for the Wichita
904 Royalty Company, I kept our records showing the expenditure throughout those years, until George Peckham died, showing that we owned a half interest in the Marlborough Addition. Our records were not open for inspection to the stockholders, they could have talked to Mr. Peckham, but none of them did. I expect Mr. Peckham would have let them see the records if they had asked. No stockholder was ever denied the right to see the records, that I know, after I became trustee. About the first of November or December, 1929, the records were eligible for the stockholders to see. I did not deny any stockholder the right to see where we were asserting ownership in the Marlborough. I thought we owned a half interest in the Marlborough Addition.

At first, I did not employ a lawyer after I became trustee. I had absolute confidence in Mr. Harrell and Mr. Humphrey in what we were trying to do, and Bill Peckham in what we were trying to do, to keep this thing quiet because George Peckham was short, and get it straightened up, and then as far as I could see the records would be clear. I certainly do tell the Court that George Peckham was short, and the records so reflect; and I file claim in that respect. I was not personally short a cent with George Peckham. As to the $34,000.00 worth of checks you exhibited to me this morning, I can show what every check was for, it was either a bona fide interest where I had paid in and received back my share of the profits, or it was payments on property in which we were
905 interested together. I did not keep a personal set of books, I have never had enough business

to keep one. I have letters or something to show everything I did. I have not had access to George Peckham's files. We each shared property in our names for the other, and switched it back and forth, sometimes when he made a deal I was interested in it, he gave me a letter and sometimes he didn't. I also took property in my name and George Peckham owned half of it, and he did the same with reference to me. That was common in Wichita Falls from 1923 to 1929, among people who lived here.

Many of these checks that we accused George Peckham of in the first trial, have been washed out, and we gave credit for all that did wash out. Check No. 427 for $5,500.00; it covers the purchase of property which we tendered back. The $1,500.00 we got back. We accused George of getting that $5,500.00, and he got it, according to the records, made payable to the City National Bank and deposited to G. W. Peckham's account. As to the $1,500.00, our cash memo dated November 10, 1925, shows that the money was refunded by George W. Peckham. The entry shows, from G. W. Peckham, November 10, 1925, cash memo No. 148, $1,500.00, and reads, "money refunded on producing royalties." It is shown by check No. 427. No. 427 was the check for $5,500.00, but no property was delivered for the $1,500.00 item, and it was returned to the company. Our deposit showed on November 10, 1925, where George Peckham's check was given for $1,500.00. The $1,500.00 of that amount paid
906 for the purchase of the east half of section 4, B. B. & C. R. Co. Survey, Certificate 692, 320 acres, Archer and Young Counties, Texas, Property No. 82. I think the deed to that property has been offered in evidence, from B. L. Fain, and I think the deed has been in our possession since 1925. It was a producing royalty. I think that is among that which has been suspended. I am not sure that we have collected any of it lately. I did not go to George Peckham and ask whether he paid $1,500.00 for it, I had no access to his personal checks at all. I imagine this is the check of B. L. Fain for that date.

it says, Kunkle Royalty, $1,500.00. The date of the deed, October 9, 1925, paid on this date, the date of this check is November 12, 1925. The deed was filed for record November 12, 1925, Volume 116, page 140, the same date the check was given. George Peckham paid out that money.

Mr. Boone:

We offer the check in evidence, Defendant's Exhibit 108.

DEFENDANT'S EXHIBIT 108.

Dated, Wichita Falls, Texas, 11-12-1925. No. .... Pay to the order of B. L. Fain, $1,500.00. Sale of Kunkle Royalty. (Signed) G. W. Peckham. Indorsed B. L. Fain. Perforated paid 11-13-1925. (Stamped) Security National Bank Clearing House. Paid Nov. 13, 1925. Indorsements guaranteed. "3" Wichita Falls, Texas.

907 The Witness:

We have the property. $2,500.00 was property No. 81, to purchase one-fourth of the royalty on the east thirty acres of a seventy-one acre tract of land out of the D. Milligan Survey, Callahan County, Texas. That deed was offered in evidence. Here is the original deed that came from A. J. Mathis and wife, L. Mathis, consideration $2,500.00, the deed recites $2,250.00. On that date there is a check of George Peckham for $2,252.25. The date of the check is October 17, 1925. The deed was recorded on October 23, and filed for record on October 23, 1925. $2.50 worth of Revenue stamps. That is George Peckham's check. Dated October 20, and paid October 23. The deed was filed for record October 23, the same date the revenue stamps were paid. C. A. Rogers is an oil man here in town, he was connected with the United Royalties. The notation on the check of George Peckham looks like it says, "Commission on Cross Plains

Royalty." We have no other Cross Plains royalty. This commission of $225.00 was paid by George Peckham, I suppose. I don't know who examined the title. I never saw the check of November 3, 1925, $71.00, to E. C. DeMontel. He was Mr. Peckham's personal lawyer, the company did not have much use for attorneys on titles, they were furnished on properties that were purchased. It looks like from those checks and this deed that George Peckham accounted for every penny of that $5,500.00, or rather, it looks like that is the total amount of it. Bill Peckham refused to let me look at George Peckham's books, we were never able to get anything out
908 of that office. Those checks and that notation thereon are signed by George Peckham, and supposedly that accounts for the $5,500.00.

Mr. Rogers:
We object to that as a conclusion of law.

Q. And you accused your best friend of fraud in 1931, setting up this item as one of the fraudulent transactions, didn't you?

Mr. Rogers:
We object to that, because it is the law that he who deals in a dual capacity between himself as an individual and himself as trustee, thereby commits a wrong.

The Witness:
Yes, sir.
In the last pleading we filed, we tendered this item back. I did accuse him of fraud in that pleading, so far as I could tell. We had no access to George Peckham's checks, or any part of them, and knew nothing about them. I don't think the Callahan ever produced anything, we have received oil runs off of the other one. I will let you see the Kunkle royalty.

Mr. Humphrey:

We offer in evidence the deed from Scannell, as trustee, to the Marlborough Addition, marked "Plaintiff's Exhibit 47."

909 PLAINTIFF'S EXHIBIT 47.

Deed from E. E. Scannell, Trustee, Wichita Royalty Company to Texas Investment Company.

Consideration $10.00 and other valuable consideration.

Conveying the following land:

Tract No. 1:

Being 51.59 acres of land out of the Cyrus Eakman Survey and described by metes and vounds as follows, to-wit:

Beginning at a stake for the common corner of Blocks 17, 18, 37 and 38 of Highland Irrigation Subdivision, which stake is 1076.2 feet west and 32.37.6 feet South from the Northeast corner of Cyrus Eakman Survey; thence West 1076.2 feet, a stake for the Southwest Corner of Block 47 of said Irrigation Subdivision; thence South 115 feet to a stake in center of Avenue "X"; thence North 82 degrees and 40 minutes west with center line of Avenue "X" 391.2 feet to a stake in center of Taylor Street; thence North 7 degrees and 20 mins. East with center line of Taylor Street 890 feet to a stake; thence North with center line of Taylor Street 641.3 feet to a stake in North line of Avenue "U"; thence East 30 feet to a stake for the

910 Southwest corner of lot eight (8) block eleven (11) Southside Addition; thence North with the West line of said lot eight (8), 134 feet to a stake in South line of Lot four (4) block thirty-two A (32A) Highland Addition; thence South 82 degrees and 40 minutes East 72.4 feet to an iron pipe in center of Taylor Street; thence North 7 degrees and 20 minutes East with center line of Taylor Street 30.3 feet to iron pipe under

fence; thence East 1194.5 feet to stake; thence South 155 feet to a stake for Southwest corner of Lot seventeen (17), Block nine (9), Southside Addition; thence East 50 feet to stake for Southeast corner of said lot seventeen (17); thence South along West line of Cotton Street 654.4 feet to a stake for Southeast corner of Block twenty (20) of said Southside Addition; thence East 6.8 feet to stake for Northwest corner of Block nineteen (19) and Northeast corner of Block thirty-six (36) of said Highland Irrigation Subdivision; thence South 809.4 to the place of beginning, containing fifty one and 59/100 (51.59) acres of land, and comprising lots ten (10) to sixteen (16) inclusive in Block nine (9); Lots one (1) to eight (8) inclusive in Block 10 & eleven (11); all of Block number thirteen (13); all of Block number fourteen (14); all of Block number fifteen (15); all of Block Number twenty (20); all of Block number twenty-one (21); and all of Block number twenty-two (22); all being out of the Southside Addition to Highland Addition to the City of Wichita Falls, Texas; and also comprising the following:

911 All of block number thirty-six (36); all of block number thirty-seven (37); all of Block number forty-seven (47); all of Block number forty-eight (48); all of Block number seventy-seven (77); and all of Block number seventy-eight (78); of the Highland Irrigation Subdivision according to the maps or plats duly recorded in the Deed Records of Wichita County, Texas.

Tract No. 2:

Being 6.06 acres of land out of the Cyrus Eakman Survey, and described by metes and bounds as follows, to-wit:

Beginning at a stake for the Northwest corner of Lot 2, Block 12, Southside Addition to Highland Addition; thence North 7 degrees and 20 minutes East 30 feet to a stake in center of Avenue "U"; thence East with the

center of said Avenue "U" 145.2 feet to a stake; thence South with center line of Taylor Street 611.3 feet to a stake; thence South 7 degrees 20 minutes West with the center line of Taylor Street 890 feet to a stake in center of Avenue "X", same being the Southwest corner of a tract of 51.59 acres heretofore deeded to parties herein named; thence North 82 degrees and 40 mins. West with center of Avenue "X" 190 feet to a stake; thence North 7 degrees and 20 minutes East with center line of Alley 920 feet to a stake; thence South 82 degrees and 40 minutes East 10 feet to a stake; thence North
912 7 degrees and 20 minutes East with West line of Lot 2, Block 23, of said Southside Addition 202 feet to a stake in center of Allen Avenue; thence North 82 degrees and 40 minutes West with center of said Allen Avenue 50 feet to a stake; thence North 7 degrees and 20 minutes East with the West line of Lots 23 and 2 Block 12 of said Southside Addition, 355 feet to the place of beginning, containing 6.06 acres of land and comprising the East one half of block Nos. 40-a and 41-a of the Highland Addition to the City of Wichita Falls, and also Lots 1, 2, 23 and 24, Block 12, and Lots 1 and 2 of Block 23, of the said Southside Addition; and,

Whereas, on the 30th day of September, 1929, G. W. Peckham, joined with J. T. Harrell and J. A. Kemp, conveyed to the Texas Investment Company of Wichita Falls, Texas, a private corporation, all of the following lands and premises situated in Wichita County, Texas, to-wit:

Lots Nos. 1, 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19 and 23 out of Block No. 1; Lots Nos. 1, 2, 4, 5, 6, 8, 9, 11, 14, 15, 16, 17, 18, 19, 20, and the South one-half of 13, out of Block No. 2; Lots Nos. 2, 3, 4, 5 and 6 out of Block No. 2A; Lots Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and 31 out of Block No. 3; Lots Nos. 1 to 3 inclusive and Lots Nos. 5 to 61 inclusive out of Block No. 4; Lots Nos. 1, 2, 3, 4, 5,

6, 7, 8, 9, 10, 11, 12, 17, 18, 20, 28, 29, and 30 out
913 of Block No. 5; Lots Nos. 12, 13, 14, 15, 16, 17, 20, the North one-half of Lot No. 22, and the South 40 feet of Lot No. 23 out of Block No. 6; Lots Nos. 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25 and the South one-half of Lot No. 9 out of Blk No. 7; All of Block Nos. 8, 9, 10 and 11; All of the above described lots and blocks being out of the Marlborough Addition to the City of Wichita Falls, Texas, according to the plat of said Addition as recorded in the Plat Records of Wichita County, Texas; and

Whereas, at the time of the execution of said deed, the title to said properties had heretofore vested in the Wichita Royalty Company as to the interest owned therein by G. W. Peckham, but that the said Wichita Royalty Company consented to the execution of said deed aforesaid to the Texas Investment Company.

Duly acknowledged by E. E. Scannell, sole trustee of Wichita Royalty Company, before J. R. Terrell, Notary Public in and for Wichita County, Texas, on March 29, 1930.

Through and across the trustee's signature, the words "Void, Void" are written.

914 Mr. Rogers:

We object to that because the testimony affirmatively shows that the instrument they signed and acknowledged was never delivered, nor did it leave the grantor's desk, and never reached the possession of the grantee, nor any person other than the grantor, nor did the signing trustee have authority to sign the same. It was beyond the scope of his authority, was not embraced or covered by the declaration of trust creating its power, and the signature itself has written through it, (the words "Void," "Void."

(Which objection was by the Court overruled, to which the defendant then and there excepted).

The Witness:

I have the information you asked me for with reference to the Kunkle Royalties, property No. 82; the amount of royalties received up to September 3, 1926, we have collected $9,592.67, from a royalty which he bought and cost the company $1,500.00. At the time the property was purchased there was no production on it, the production has come in since the date of purchase, which was October 8, 1925, that is the date we give the check. We got oil to the amount of $1,327.60 on May 31, 1927. This record has been in our office, and production has been coming in since 1926, up to September 30, 1936. It is a fact that I accuse George Peckham of fraud in selling the company this property, that is one of the items. My recollection is that in the month of October, we got $4.05. This property was never sold—I don't recall whether it was sold under the deed of trust given to Guy Rogers
915 or not. I don't think I have that deed of trust given to Charley Black and Guy Rogers, I don't recall. I have had to haul these records around on account of persecution and the pressure that has been brought against me on the outside of the Courthouse in this case, and it has cost me practically everything I have. I will hunt these things up and get them together the best I can.

Mr. Rogers:

I will give you a copy of the deed to Guy Rogers and Charley Black and Ray Bland, if you wish it.

The Witness:

I did, on December 6, 1933, as sole trustee of the Wichita Royalty Company execute a deed of trust to Charles L. Black of Austin, Texas, and Ray Bland as the trustee, Wichita County, Texas, and Guy Rogers, we did that because we did not have the money to carry on this case.

That property was sold in August, 1934 by the trustee, certified copy having heretofore been offered in evidence, as Plaintiff's Exhibit 28, for $250.00. I don't know whether I have the voucher for $250.00 or not. Guy Rogers is my attorney, Ray Bland was trustee, he also works for Guy Rogers, or is associated with him. I presume Ray Bland got the $250.00 from Guy Rogers.

Q. Have you any property now that does not belong to Guy Rogers, as trustee for L. B. Rogers estate? I mean the Wichita Royalty Company?

Mr. Rogers:

We object to that as a conclusion. The evidence of title cannot be so testified to by a witness. In that
916 connection, I offer in evidence the disclaimer filed in the 89th District Court of Wichita County, in the suit between the parties here, wherein all interest in this has been disclaimed.

917 The Witness:

So far as I know, I have not paid Guy Rogers back for this. I don't know how much I have paid Guy Rogers or Charley Pla[illegible].

The consideration recited in the deed from my wife and myself to George Peckham dated February 14, 1927, covering lots 1 and 2, block 27, in the Marlborough Addition, says, for and in consideration of $25,500.00 to us paid and secured to be paid by G. W. Peckham, $13,500.00 cash, and balance of $12,000.00 to be paid according to the terms of certain installment or vendor lien notes this day made by G. W. Peckham, payable to the order of E. E. Scannell, in the principal sum of $12,000.00, payable in forty-eight monthly installments of $250.00 each and bearing interest at eight percent. I can't tell you much about those payments on that amount which you have asked me about, I told you this morning about the $8,000.00 check, you can find that out from the officers of the

bank, when the house was pretty well along it was transferred to George Peckham, and that is about all I can tell you about it. If was handled by him, it must have been all right, or he would not have accepted it, I am quite sure the mortgage company would not have loaned the money if it was not all right. Five days after I executed this deed I presume he gave me a check for $4,370.00, probably Mr. Allen had come to me for it, and I got it off of George Peckham and turned it in, I could not tell you about the details at this time. I do not have any of the records on that. You can get my bank state-
918 ment in the bank easier than I can get the checks, however, I will attempt to get them.

Mr. Boone:

We offer the deed in evidence, from Mr. Scannell to Mr. Peckham, marked "Defendant's Exhibit 109".

DEFENDANT'S EXHIBIT 109.

E. E. Scannell and wife to G. W. Peckham.

Consideration, $25,000.00, as follows:

Thirteen thousand five hundred dollars cash, and twelve thousand dollars in installment vendor lien notes, payable in forty eight monthly installment of $250.00 each, bearing eight percent interest, and providing for ten percent attorneys fees if placed in the hands of attorneys for collection, and conveying lots 1 and 2 in block 7, in the Marlborough Addition to the City of Wichita Falls, Texas, according to the recorded plat of said addition.

This conveyance is expressly made subject to the terms, provisions and restrictions contained and set out in certain agreement and declaration of trust, by J. A. Kemp, J. T. Harrell and G. W Peckham, dated May 24, 1926, and recorded in the deed records of Wichita County, Texas on June 5, 1926.

Dated February 14, 1927, signed by E. E. Scannell and Ethel E. Scannell.

Duly acknowledged by E. E. Scannell and Ethel E. Scannell, his wife, on February 14, 1927, before H. C. Richardson, Notary Public in and for Wichita County, Texas.

919 Filed for record February 25, 1927, at 2:22 P. M. by the County Clerk of Wichita County, Texas.

Recorded in Volume 278, Page 50 of the deed records of Wichita County, Texas.

Mr. Rogers:

The same objection, it is a matter between strangers to the litigation.

The Witness:

From the early part of 1926 to the early part of 1927, I carried title to this property in my name, as far as the building of the house is concerned. I had the balance of the other lots in the Marlborough Addition in my name, that was common practice here in the business world at Wichita Falls during that time.

Various and sundry persons bought these different royalties that were sold to the Wichita Royalty Company, some from George Peckham and some from outsiders, a few of them from Ross Robertson I think maybe Ross Robertson's property was the original property that went into the original trust.

Q. You knew that George Peckham sometimes took those tracts in his name, then the title was transferred into the company?

Mr. Rogers:

We object, it would be immaterial unless and until the money of the royalty company went to the original purchase. No rights of the royalty company would accrue on George Peckham buying a piece of property in his name, and it takes a greater evidence of intent
920 merely to convey a trust than a mere mental reservation and secret condition of mind, in order to bind the grantor. No right could accrue to the royalty company even if such an intent were shown.

The Witness:

Yes, we did. I would not say about the practice as to other companies at that time, and I don't think that practice prevailed in our company, but I could not be sure about it. As to whether or not checks were turned in that had been made payable to George Peckham, I could not say because I did not know where the money was coming from, only as it was reflected on our books, he told me to put it on there, and if I found out afterwards, I put it on there. When I got deeds to property I knew what it was and what it came from, if the deed showed. I knew where most of the property came from prior to George Peckham's death. I did not acquire any additional property after George Peckham's death.

I took the salary that George Peckham did, at first, after he died, which was $400.00 per month, and it finally got down to nothing. At first Ross Robertson, when he was trustee, did not draw anything, and then he got $500.00 per month, which is reflected in the record. This trust was organized by R. R. Robertson. This trust has paid the stockholders one hundred and eighteen percent; in other words, they paid dividends every month or every three months, and the total amounts would be one hundred and eighteen percent, which was paid out of the revenue of the company.

921 I have sent reports to the stockholders, and have most of them. They were sent out sometimes every week and sometimes once a month, and

sometimes maybe it would be a year or two years. I will try and get all the documents that were sent to the stockholders, after I became trustee. Defendant's Exhibit 30, purports to be a letter to the stockholders of the Wichita Royalty Company, dated November 30, 1929. That notice states the truth, I signed it as trustee of the company. I had been with the company since 1923. I knew George Peckham had conveyed to the Wichita Royalty Company several tracts of land. I knew he had conveyed to the company a half interest in the Marlborough Addition, knew about the letter accompanying the deed to the Marlborough Addition. I wrote to the stockholders on November 30, 1929, a letter as follows, "About five o'clock on the afternoon of November the seventh, Mr. George W. Peckham, trustee for this company, had started to his home and family when he was suddenly stricken with a heart attack, and died within a few moments, without regaining consciousness. Mr. Peckham was a comparatively young man, being only forty-six years of age, was apparently in good health and quite active in the oil development of northwest Texas area. He was a man of Sterling character, of keen business judgment. And a conscientious, tireless worker, whose death is indeed an irreparable loss, not only to his family, but to the community and this company." That was my description of George Peckham then. And I further stated, "and still we know that the Great Reaper must come for us all, yet we cannot but wonder sometimes why
922 those of greatest service cannot longer be spared." I wrote that to all of the stockholders. I did not accuse George Peckham of fraud in that letter. Up until I filed this suit in 1931, I never accused him, or wrote a letter to the stockholders, accusing George Peckham of dishonesty. I don't think any stockholder ever requested me to file this suit before it was filed in 1931. That was my duty, as trustee of the Wichita Royalty Company to protect their interest as I saw fit, and that is what I did. When I talked to Mr. Harrell about that in his office, I told him that My records show in the report

on file, I show that he was short with the company, $19,000.00. I gave him credit for all of the offsets that we knew of at that time. I did accuse George Peckham of a shortage of $5,000.00 on the investigation I had made at that time, as far as we could go. I have one piece of property that we have obtained $9,000.00 back on; he paid back in less than fifteen days, one thousand five hundred dollars, and five thousand dollars, that went into our bank account, and I gave him credit for it as heretofore testified to.

I set up a shortage of George Peckham of $19,000.00 and presented that claim to the administrator, which he refused to pay. He promised me at first he would pay it, and later, after they got me worked around where they thought everything was ok, he refused.

This instrument you hand me is a copy of the original claim, presented to the administrator about December 20, 1930, and they kept it and stalled along until May, 1931. I did not file suit at that time, because I didn't know much about it. That is when I begun to inquire into the matter, I hired some lawyers to see what the rights of the stockholders were. I got Guy Rogers. John Davenport was the first one I talked to in regard to it. At the time I filed this claim, or presented this claim to the then administrator, who was Bill Peckham, I had previously talked to J. T. Harrell. I don't think Mr. Harrell ever told me that the books of the bank were open for my inspection. The bookkeeper and myself did check it. We got the liability record from the bank down here, and checked it out and cross checked it, as best we could ascertain what credits had been made, and what payments had been made, and the credits against it. I don't think the bank refused to give me any credit at that time. This statement here says, "Payments of Wichita Royalty Company, unaccounted for against the City National Bank during G. W. Peckham's administration, less payments by G. W. Peckham on behalf of the Wichita Royalty Company. I have since checked those things. The books of the royalty company show some credits. To my knowledge I have never

923

gotten back from the Royalty Company any of the $19,828.67. Only such as we have given credit for here; I would have to trace out each of these items to see, but I don't recall them at this time. In our accounting, we will attempt to trace every single item.

Mr. Humphrey:

We offer this instrument in evidence, Plaintiff's Exhibit No. 48.

924 (Marked "Plaintiff's Exhibit No. 48" and reading as follows:)

PLAINTIFF'S EXHIBIT 48.

Affidavit to Claim.

The State of Texas,
County of Wichita.

I do solemnly swear that the attached claim in favor of Wichita Royalty Company, a trust estate, against G. W. Peckham, deceased, is just and that all legal offsets, payments and credits known to me have been allowed.

The affiant further says that he is the sole trustee of the above company and that he makes this oath on facts which have become cognizant to him by virtue of his being the sole trustee of said company, and that said Wichita Royalty Company is the owner of said claim.

(Signed) E. E. SCANNELL,
Trustee.

Sworn and subscribed to before me by the said E. E. Scannell, in the Capacity stated, this the 16th day of December, A. D. 1930.

(Signed) H. C. RICHARDSON,
Notary Public, Wichita County, Texas.

The above claim was presented to me the .... day of ....., 1930, and after examining it, I hereby ..... this the .... day of ....., 1930.

Administrator of the Estate of G. W. Peckham, deceased.

925 Payments by Wichita Royalty Company Unaccounted for by City National Bank During G. W. Peckham Administration Less Payments by G. W. Peckham on Behalf of Wichita Royalty Company.

To G. W. Peckham by Wichita Royalty Company:

Date		Check No.	Amount
1-19-27		571	$2,000.00
2-19-27		579	2,500.00
3-23-27		591	2,000.00
6-18-27		620	1,200.00
8-16-27		635	1,500.00
10-14-27		650	2,400.00
11-25-27		657	1,800.00
11-25-27	L. F. Wilson Royalty sold to Petroleum Royalties Corporation		5,700.00
2- 1-28	Hattie Vaughn Royalty sold to American Mineral Spirits Company		5,700.00
4-20-28		710	1,850.00
			$26,650.00

By G. W. Peckham for Wichita Royalty Company:

Date	Payee	Principal	Interest	Total
8-31-27	City Nat'l Bank		$500.00	$ 500.00
1$-19-27	City Nat'l Bank	$1,076.00	260.00	1,336.00
11-25-27	City Nat'l Bank	1,014.67	485.33	1,500.00
2-15-28	City Nat'l Bank	4,060.67	424.66	3,485.33
				6,821.33

Balance Unaccounted for:

Paid to G. W. Peckham	$26,650.00
Less Disbursements by G. W. Peckham	6,821.33
Balance Due Wichita Royalty Company	$19,828.67

The Witness:

This automobile that George Peckham purchased was in 1924, and he kept it two years and sold it and the company got the money for it, there was no objection at any time about him having an automobile for the use of the company, by the stockholders, it only comes into account with reference to these checks. We had to have an automobile to get around and look at the property, still I am charging that up against him.

Check No. 529, dated August 20, 1926, has Mr. Peckham's name on the back of it signed by me.

Here is check No. 261. I also have the voucher, on which I wrote the word "August" after the voucher went in. I think the Grimshaw was the first piece of property Peckham bought after he went in as trustee. I think the highest number given the property acquired by Mr. Peckham for the Wichita Royalty Company is 97, but that would not necessarily be the number of pieces of property. The first number bought after Mr. Peckham went in as trustee was No. 71, the Grimshaw. That
927 deed has been offered in evidence, my memorandum record shows that it was signed by G. W. Peckham, and we paid $7,500.00. We issued on that property check No. 1,253 made payable, dated August 10, 1923, issued to the City National Bank, $2,500.00. It says, "Credit to the account of B. L. Fain," and has some initials on it I cannot read. I had no way of tracing that. It is among those items that were listed in tracing down the transactions between George Peckham and the Wichita Royalty Company. I don't recall that this was in the original suit, it came in later, in the original suit we did not go back that far. The records seem to show that this is one of the items in which George Peckham defrauded the company. This suit was filed in June, 1936. One suit was filed in 1934, in September. That suit does not mention the Grimshaw, the first mention of the Grimshaw was in June, 1936. In the original suit, as I recall, we only went back to a little time prior to the notes the bank originally filed suit on, out of which this litigation arises;

I think to along in the fall of 1925, October, or November. I am not quite certain about the time. In 1936, we seek an accounting from the time George Peckham came in as trustee. I knew of the transaction called the Grimshaw, at the time of the filing of the suit in 1931, but I had not gone into it, I did not know how much was on the Grimshaw, and that there was another interest sold, until this spring, or how much the Wichita Royalty Company bought—I mean how much George Peckham got in the original assignment to him, and that went to the
928 Wichita Royalty Company, I had not traced it down. I did know from what source the Wichita Royalty Company got it, and I expect I knew in 1931. As to accusing George Peckham of fraud, the Supreme Court said what was fraud, and that is what I said. At the time I decided to accuse George Peckham of fraud, I knew all about the record, I knew that we had paid something like $7,500.00 for the Grimshaw. But did not include it and did not decide to repudiate it in 1931, we did decide to repudiate it in 1936, we went back to the source, when George Peckham came in.

The three checks with reference to the Grimshaw proposition have been offered in evidence, the first one for $2,500.00, No. 1,253, March 10, 1923, that check was returned to our office about the first of April, 1923, and has been in my possession since. I posted the check in the ledger. On the back of that check it shows it went to the credit of B. L. Fain. I did not ask B. L. Fain about it, I had no way of knowing where the check went to. B. L. Fain still lives in Wichita Falls and has been living here during the last thirteen years. I made inquiry of the City National Bank about the check. I could have, if I had looked at the check, known who got the money, or I could have gone to B. L. Fain. With reference to the second check, $2,516.66, I doubt very much if Mr. Fain would be able to give any information in regard to it, I didn't ask him because the check is made payable to George W. Peckham, and I didn't know whether B. L.

Fain got it or not. On May 6 or 7, 1923, George
929 Peckham gave B. L. Fain a like check. I never made any investigation to see whether or not B. L. Fain had this property under contract. F. O. Harrell is an oil man who did live here in Wichita Falls. He does not live here now, he lives in Oklahoma City. I do not have any connection with F. O. Harrell, he has been a friend of mine since about 1923. He does not hold any property in his name for me, I never had any business transactions with F. O. Harrell until recently. I became the trustee of the Perpetual Royalty Company this spring and he was formerly trustee of that company. Our transactions had to do with the deal, transferring the trusteeship from himself to me. He is not related to J. T. Harrell, I have never transferred any of this property to F. O. Harrell. F. O. Harrell did not get any of the Wichita Royalty Company money on the Grimshaw deal that I know of. I do not know whether F. O. Harrell and B. L. Fain were associated together in that transaction or not. We threshed out this instrument and found that he had an interest in it, looked it up on the books of the company and I found where they bought an interest in it. I refer to the Perpetual Royalty Syndicate. I never asked F. O. Harrell about George Peckham's interest or how he acquired it, I saw Mr. F. O. Harrell seldom. I think he left here in 1928, and I have seen him once in a while since then, about four times this spring. I did not ask him anything about his interest in this transaction at any time. I did not know at that time his company had an interest
in this property, I found it out when I took over
930 this property and begun to look after the company. I think I took over this property some time in March or April, 1936, several months prior to the time I accused George Peckham of fraud. Our memorandum record taken off of the book shows it made a total of $8,591.76, that s to September 30, 1936, and it is still producing a little. I do not have what it was making in April, 1931. In May, 1930, the entire lease ran 512 barrels, and we got $17.59 cents for our part, at that time oil was worth $1.46 1/2.

In two years it made about $450.00. From 6-1-28 to 5-31-30, it run $489.85. I knew what it was making in 1931 and did not file suit to cancel it. I knew what it was making in 1934, and did not file suit for cancellation, in 1936 is the first time I ever sought to set it aside. I have been receiving rents and revenue from the property since 1931, and claiming the property for the Wichita Royalty Company, paying the taxes on it, and getting the revenue, paying the gross production taxes on the royalty.

I believe the next property is the Luke Wilson, No. 75.

No. 72 is the Tonkawa property, all of those deals, I think, were made before George Peckham became trustee. It says it was bought on the 6th of February, 1924. The conveyance was from B. L. Fain. George Peckham was the trustee of the company in 1924, in which year the deed is dated. The first check, April 19, 1923, No. 1,299. I have handed you the copy of a contract between George Peckham personally and B. L. Fain, I found it among my records, I couldn't tell you when it was turned over to me, I found it this fall when I begun to hunt up some various properties, I think it has been in the file since 1923. The contract is dated April 19, 1923, whereby George Peckham individually purchased this property and agreed to pay $20,625.00 for it.

931

Mr. Boone:

We offer it in evidence, marked "Defendant's Exhibit 110."

DEFENDANT'S EXHIBIT 110.

State of Texas,
County of Wichita.

This Agreement entered into by and between B. L. Fain hereinafter styled Party of the First Part, and Wichita Royalty Company hereinafter styled Party of the Second Part, Witnesseth:

Party of the First Part agrees to sell and hereby does sell to Party of the Second Part for an agreed consideration of $20,625.00 the following described interest.

1/320 of the Royalty (which is equivalent to 1/2560 of the total production), on the Northwest Quarter of Section 34, Township 25 North, Range 1 West, Kay County, Oklahoma; Also 1/64 of the Royalty (Which is equivalent to 1/512 of the total production), on the West 1/2 of the Northeast Quarter of Section 34, Township 25 North, Range 1 West, Kay County Oklahoma; Also 3/640 of the royalty (Which is equivalent to 3/5120 of the total production). On the East 1/2 of the Northeast Quarter of Section 34, Township 25 North Range 1 West, Kay County, Oklahoma: Also 1/256 of the royalty (Which is equivalent to 1/2048 of the total production), on lots 1 and 2 and the South 1/2 of the North east Quarter of Section 3, Township 24 North, Range 1 West, Noble County, Oklahoma.

932

Party of the Second Part agrees to purchase above described interest from Party of the First Part for the sum of $20,625.00 to be paid as follows: $10,000 cash receipt of which is hereby acknowledged. $1250 on the 7th day of May 1923; $2500 on the 7th day of June 1923: $2500 on the 7th day of July 1923: and $4375 on the 7th day of August 1923.

It is further understood and agreed that all the oil runs accruing from above described interest beginning at 7 A. M. April 16, 1923 shall be credited by Party of the First part on the $4375 payment due by Party of the Second Part on August 7, 1923.

Party of the First Part agrees to execute proper conveyances in favor of Party of the Second Part covering above described interest which conveyances shall be placed together with a copy of this contract in escrow in the City National Bank of Wichita Falls, Texas, to be held by said bank pending the fullfillment of this contract.

If Party of the Second Part complies with terms
933 of this contract said bank is authorized to turn over to Party of the Second Part above mentioned conveyances upon the final payment recited above.

Witness our hands this 19th day of April, A. D. 1923.

B. L. FAIN,
Party of the First Part.
WICHITA ROYALTY COMPANY,
G. W. PECKHAM,
Party of the Second Part.

The Witness:

The Tonkawa property produced $39,892.71, and the checks show it cost $20,968.77, some item of interest included in the check. The property was put on the books of the Wichita Royalty Company May 31, 1923, $20,625.00. I am reading from the ledger. The check No. 1,299, dated April 19, 1923, made to B. L. Fain, in the amount of $10,000.00, the voucher reads, "To apply on purchase price of royalty, interest in Tonkowa pool, $10,000.00." That is the first record I made and that check was the first payment. Check No. 1,319 dated May 7, 1923, made to B. L. Fain, in the amount of $1,258.33, and the voucher reads, "to apply on last payment royalty interest 72, Carmichael, Goldtry, McDaniel and Ceverlin tracts, Tonkowa pool." That went on my books and records May 7, 1923.

Check No. 3, dated June 15, 1923, for $2,533.33, to B. L. Fain, Wichita Royalty Company, by E. E. Scannell, to pay last payment royalty interest No. 72, Carmichael, Goldtry, McDaniel & Ceverlin, Tonkowa, Oklahoma. Principal $2,500.00, interest, $33.33. $2,550.00 check No.
934 20, dated July 6, 1923, and the voucher reads, "To apply on last payment royalty interest No. 72, Carmichael, Goldtry, McDaniel and Ceverlin, Tonkowa pool." I got the information on that check from Mr. Peckham. I am sure we had a conveyance to this property. I hand you two instruments, one of them is dated February 6, 1924, conveying three tracts. The other

one dated February 6, 1924. Between the time of the full payment of this purchase price on the sixth of July, 1923, until the 6th of February, 1924, this property stood in the name of B. L. Fain. I took the acknowledgment of Mr. Fain to each of these instruments. The Royalty Company bought this property from B. L. Fain. He got, from Godwin, Barkley Company, on the Goldtry, the deed dated April 7, 1923. And from the Godwin, Barkley Company he got a deed on the Dorothy Carmichael on the 7th of April, 1923, and from the Godwin Barkley Company on the 7th of April, 1923, he got a deed to the Rosalee Ceverlin. There is one more, on the McDaniel, I have not checked the interest on it. But I imagine that declares a larger interest than we have. I don't know whether the Wichita Royalty Company owned it prior to the time we got the conveyance or not, other than this contract which is marked "Defendant's Exhibit 110," dated April 19, 1923. I am sure that has been in our possession ever since April 19, 1923. This seems to be a copy of what purports to be a contract. I have given you all the information I have on property No. 72, I will endeavor to see if I have any other information.

935 Property No. 72, known as the Tonkowa property made more than it cost. It was not purchased from George Peckham, as I understand, and we are not seeking to set it aside. I do not know whether there was any expense attached to the acquisition of property No. 72 or not, other than what the records will show. I doubt if any examination of title was made by the Wichita Royalty Company. As I recall it, that property was bought in quantity. That is a large interest, and then resold, and I am under the impression than when the large amount was bought, the large interest, the title was examined and made to it, and then it came on, when it was divided up, the purchasers or repurchasers took the title opinion that was originally rendered. I don't think I have the title opinion. I have no records of George Peckham from which I could tell whether he personally paid the expense. I have not asked B. L. Fain about it. Mr. Fain

and I used to be partners up until the time this lawsuit got so hot they brought so much pressure on him that we had to separate.

February, 1925, as soon as my salary was reduced, George Peckham began paying me $100.00 out of his pocket, after that ceased B. L. Fain assumed the title of President of the Tolowa Company, and I was still with it and went with B. L. Fain. I drew $200.00 per month. It was a corporation and B. L. Fain was the president. From the fall of 1925 until 1933, I was drawing a salary from a corporation which B. L. Fain was president of, and associated with him a good deal. I expect I had a few business transactions with Mr. Fain, how-
936 ever, we did not trade very much together, outside of our business. I was a good friend of B. L. Fain's, I never asked him about this. I sued in this case, and charged Mr. Peckham with fraud, when I was working for B. L. Fain in 1931. I did not ask Mr. Fain about this transaction, that is, what expense Mr. Peckham was out for the acquisition of this property, and I am sure Mr. Fain would not know.

H. H. CARSON, recalled, for further re-direct examination by Mr. Humphrey testified as follows:

I have testified heretofore in this case; I have been delegated by the bank to undertake to make an analysis and investigation of the various items in controversy in this case. I have had experience in accounting, bank accounting and bookkeeping. I have been in the banking business sixteen years, thirteen of that time with the City National Bank, which bank has been a commercial banking institution officered by numerous officers and employees. I believe when I started to work for the City National Bank there was about forty-two or forty-three officers and employees, and it got down to thirty some odd, and then went back up in the forties. They had tellers, receiving and paying and collections, and also note discount tellers. The same individuals were both paying and receiving tellers, the other tellers were in different departments.

937 It has taken a considerable time to investigate with reference to these various items, I have been devoting most of my time to it for the last six months, and during that time have had access to the books and records of the Wichita Royalty Company, with the exception of one or two books which have been misplaced—I did not see the journal which they could not locate, and I did not see the cash receipts, however, I don't know that I asked for them. I saw their ledgers and their journals and their canceled checks and vouchers. Also a list and description of their properties. I also furnished the Wichita Royalty Company our books and records reflecting the various transactions; I made copies of bank deposit slips statements and checks, and note references, and individual accounts of various parties. I also had access to such records as were available from the estate of George Peckham. I had his bank statement and his canceled checks. Also this book here that has been offered in evidence, the memorandum book. It is in his handwriting. He kept no regular set of books that I could find. It developed during the investigatidon that Mr. Peckham, and also the Royalty Company, had an account involving certain of these transactions with the Security National Bank. which was functioning in Wichita Falls at that time, and has since closed. I have not been able to find out anything from the books and records of the Security National Bank, the man that is in charge of those papers told me that the records had been destroyed
938 by the receiver. The bank went into liquidation.

I have also been to various counties and checked the deed records, in the county clerk's offices. I have interviewed the parties who made some of the deeds that are involved herein. I made the investigation in Archer County, Eastland County, Callahan County, Gray County, Wheeler, Wilbarger and Wichita County. I also investigated the Marlborough Addition account, which is the same as the Texas Investment Company—examined their books. In other words, I made a rather

comprehensive audit of investigation of these matters. From my investigation I have become acquainted with various items involved in this transaction. Most of these checks, or practically all of them, are what is called voucher checks. From my investigation, I determined that those vouchers had been detached at the time the checks were presented at the bank. I knew George Peckham while he was living, I was working in the bank at that time, handling the collection department. I knew the general reputation of George Peckham when he was alive, and that reputation for truth and honesty and integrity was good—and he was so regarded by the people who knew him.

I have checked each item in paragraph 17, of the cross complainant's re-casted cross complaint and interpleader, and have made a careful analysis and investigation of all the facts and records that I had at hand to determine the application of the various funds of Mr. Peckham. The first item, check No. 427
939 is dated October 8, 1925 for the sum of $5,500.00, payable to the plaintiff bank, and alleged that Peckham received individual credit for this sum; that item was honored on or about that date by the plaintiff bank. It is signed by E. E. Scannell for trustee, handled by teller No. 7 in the bank. G. W. Peckham made out that deposit slip. G. W. Peckham individually was given credit for that sum of $5,500.00, on his individual ledger account. I examined the Wichita Royalty Company voucher notation, which shows, property No. 81, to purchase of one-fourth of the royalty on the east thirty acres of a seventy-one acre tract of land out of the Milligan Survey, Callahan County, Texas, $2,500.00. Property No. 82, to purchase of one-eighth of royalty on east half of Section 4, V. V. & CRCo Survey, Certificate 682, 320 acres Archer and Young County, Texas, $1,500.00. Additional interest, description of that to be accepted upon approval of title, $1,500.00. I have found in what manner George Peckham expended the sum of $5,500.00. I have seen the deed from A. J. Mathis

and wife that has been exhibited in evidence to the thirty acre tract in Callahan County. I have the data upon the expenditure for purchase money for that thirty acre royalty. George Peckham paid a draft to the First National Bank of this city for $2,250.00, plus $2.25 exchange on that thirty acres. The deed accompanied the draft. He paid a commission of $225.00 to C. A. Rogers, which check has been offered in evidence. Also title expense to E. C. DeMontel of $25.00, which is included in the $71.00 check heretofore offered
940 in evidence. I have a check for $2,252.25 payable to the First National for the purchase of the draft and the revenue stamps, to the Callahan Royalty.

Mr. Humphrey:
We offer the check in evidence.

PLAINTIFF'S EXHIBIT 49.

Dated Wichita Falls, Texas, 10-17-1925. City National Bank of Wichita Falls, $2,252.25. Pay to the order of First Nat'l Bank (Signed by G. W. Peckham. Indorsed (Stamped) First National Bank Wichita Falls, Texas, Cleared Oct. 19, 1925, Paid Through Clearing House. Perforated Paid 10-19-25.

The Witness:
The check you now hand me is dated 10-20-25, payable to the order of revenue stamps, $2.50 and signed by G. W. Peckham.

Mr. Humphrey:
We offer that check in evidence, Plaintiff's Exhibit 50.

PLAINTIFF'S EXHIBIT 50.

Dated, Wichita Falls, Texas, 10-20-25. The City National Bank Wichita Falls. Pay to the order of Rev.

Stamps, $2.50. (Signed) G. W. Peckham. Perforated Paid 10-23-25.

The Witness:
The check you now hand me is dated 10-24-25, payable to C. A. Rogers, in the amount of $225.00. I have not discussed this check personally with Mr. C. A. Rogers.

Mr. Humphrey:
We offer the check in evidence.

941 PLAINTIFF'S EXHIBIT 51.

Dated, Wichita Falls, Texas 10-24-1925. City National Bank of Wichita Falls. Pay to the order of C. A. Rogers, $225.00. Comm. on Cross Plains. (Signed) G. W. Peckham. Indorsed C. A. Rogers, perforated paid 10-26-25. (Stamped) Paid Through Clearing House Oct. 26, 1925.

The Witness:
C. A. Rogers is a local citizen here. The next check you hand me is for $71.00 to E. C. DeMontel, I have discussed that with Mr. DeMontel, he is a reputable attorney here at the Wichita Falls Bar, and is available as a witness.

Mr. Humphrey:
We offer the check in evidence, Plaintiff's Exhibit 52.

PLAINTIFF'S EXHIBIT 52.

Dated, Wichita Falls, Texas 11-3-25 No— The City National Bank of Wichita Falls. Pay to the order of E. C. DeMontel, $71.00. (Signed) G. W. Peckham. Indorsed E. C. DeMontel Paid 11-3-35 (Perforated).

The Witness:

The total of those checks aggregates $2,504.75. I have a record as to whether Mr. Peckham reimbursed the $4.75 which is Wichita Royalty Company check No. 438, dated November 7, 1925, payable to G. W. Peckham. Revenue stamps on royalty deed to property No. 81, $2.50. Miscellaneous expense, exchange draft on property 81, $2.25. The record shows that the sum of $2,504.75 was expended by Peckham for the purchase of the Callahan Royalty and he was reimbursed the excess of $2,500.00. The title was taken in the Wichita Royalty Company from the land owner.

942

The next is property No. 82, acquired by G. W. Peckham for the Wichita Royalty Company, $1,500.00. The instrument which you now hand me is the deed, to the second tract described in the voucher on the check for $5,500.00.

Mr. Humphrey:

We offer it in evidence, Plaintiff's Exhibit 53.

PLAINTIFF'S EXHIBIT 53.

From B. L. Fain to Wichita Royalty Company.

Consideration $10.00.

Conveying an undivided 1/64th interest in and to all of the oil, gas and other mineral in and under and that may be produced from the following described land situated in Young and Archer County, Texas, to-wit:

All of the E. Ponkonin Survey, Number Seventeen hundred (1700) and all of the L. Pankonin Survey, Number seventeen hundred and one (1701), otherwise known and described as the East one-half of section 4, B. B. B.

& C. R. R. Co. Survey, Certificate No. 692, containing three hundred and twenty acres, more or less.

Documentary stamps $1.50.
Dated October 9, 1925. Signed by B. L. Fain.

Duly acknowledged by B. L. Fain, on October 9, 1935, before LaVerne Hicks, Notary Public, Wichita
943 County, Texas. Filed for record, November 12, 1925, at 4:00 o'clock P. M. and duly recorded December 16, 1925, at 2:00 o'clock P. M. in the deed records of said county in volume 116, page 130, deed records of Young County, Texas.

The Witness:

I determined that G. W. Peckham paid the sum of $1,500.00 for that interest from his account, to which this $5,500.00 was transferred. The check is in evidence. The check which you now hand me is Defendant's Exhibit 108, which is a check dated 11-22-25, payable to the order of B. L. Fain for $1,500.00, signed by G. W. Peckham, sale of Kunkle Royalty. That bears the genuine signature of B. L. Fain and is the check, from my investigation, paid upon the Kunkle Royalty evidenced by this assignment. That is $2,500.00 and $1,500.00 that we have accounted for on that voucher. As to the other item of $1,500.00, I have a check dated November 6, 1925, payable to Wichita Royalty Company for $1,500.00, signed by G. W. Peckham and indorsed For Deposit only, G. W. Peckham, Trustee, Wichita Royalty Company, 509 Security National Bank Building, Wichita Falls, Texas. That sum of money was deposited in the Wichita Royalty Company's account. The cash receipt with reference to that items, "original record of cash receipt No. 148 from G. W. Peckham, November 10, 1925." And the description is a cash item that says $1,500.00, "received in payment of money refunded on producing royalties which was not used as additional royalty interest." Check No. 427 is that

check of $5,000.00, and that completes the first
944 item.

Mr. Humphrey:
We offer the check in evidence, "Plaintiff's Exhibit 54".

PLAINTIFF'S EXHIBIT 54.

Dated, Wichita Falls, Texas, 11-6-1925. Pay to the order of Wichita Royalty Company, $1,500.00. Signed by G. W. Peckham. Indorsed For deposit only, G. W. Peckham, as Trustee Wichita Royalty Company, 509 Security National Bldg., Wichita Falls, Texas. (Perforated) Paid 11-10-25.

Mr. Humphrey:
We also offer in evidence the cash receipt book, and ask that it be photostated, as follows:

DEFENDANT'S EXHIBIT 55.

Original Record of Cash Received No. 148

From G. W. Peckham November 10, 1925
Account:

Description of Cash Items	
Received in Payment of	$1500.00
Money refunded on producing royalties which was not used as additional royalty interest was not secured (See check No. 427).	$1500.00
	$1500.00

The above listed cash items received by me and passed to ..... for deposit.

945 The Witness:

From my investigation of the books of the Wichita Royalty Company, they have carried those two properties, the Cross Plains Royalty thirty acres and the Kunkle Royalty and the B. B. B. & C. R. R. Co. as the estate of the company since they acquired it, receiving and collecting the oil runs produced from the royalty. The testimony shows that they produced $8,500.00, or in that neighborhood, from the second royalty.

The next item is check No. 451, dated 12-28-25, for $1,250.00. I have made an investigation of that item. The allegation that this sum of money was transferred from the royalty account to Peckham's individual account is correct. I have the original deposit slip, taken by teller No. 9, it does not indicate his name. The deposit slip is evidently in the handwriting of one of Mr. Peckham's bookkeepers. The check is signed E. E. Scannell, for trustee.

Mr. Humphrey:

We offer the check in evidence.

PLAINTIFF'S EXHIBIT 56.

Wichita Royalty Company, Wichita Falls, Texas. No. 451, dated Decembe: 28, 1925. "9" (In pencil) No. 83 (48). When properly indorsed pay to the order of City National Bank $1,250.00. To the City National Bank, Wichita Falls, Texas. Signed Wichita Royalty Company by E. E. Scannell for trustee. (Indorsed) Cr. to a/c G. W. Peckham. Indorsement hereon by payee contributes acknowledgement of full payment of the items listed on accompanying remittance statement. No other receipt required. Perforated Paid 12-28-25.

Mr. Humphrey:

We also offer the following check.

946 PLAINTIFF'S EXHIBIT 57.

Wichita Royalty Company, Wichita Falls, Texas. October 8, 1925. No. 427. "7". In red pencil Dp to cr of GWP 10-8-25 When properly indorsed pay to the order of City National Bank, $5,500.00. (In pencil 81 (47) To City National Bank, Wichita Falls, Texas. Signed Wichita Royalty Company by E. E. Scannell for trustee. Indorsement hereon by payee constitutes acknowledgment of the payment of items listed on accompanying remittance statement. No other receipt required. Perforated Paid 10-8-25.

The Witness:

My investigation shows that this check of $1,250.00 was for the purchase of the Porter Ranch. The pencil notation on the Wichita Royalty Company voucher No. 83, M. L. Porter Ranch, does not show what interest. I found out in what manner Mr. Peckham expended this $1,250.00. On December 18, 1925 he gave his check to Knight & Hines for $1,200.00, signed G. W. Peckham, in the corner it says "1/8—1,000 acres Archer County acreage, Porter Ranch." Then on December 21, 1925, he gave his check to Knight & Hines for $50.00, signed G. W. Peckham, and says "Balance cash payment 1,000 acres Archer County, Texas."

Mr. Humphrey:

We offer in evidence the two checks, marked "Plaintiff's Exhibits 58 and 59, as follows:

PLAINTIFF'S EXHIBIT 58.

Wichita Falls, Texas, Dec. 18, 1925 No. ...., City National Bank of Wichita Falls, Texas. Pay
947 to the order of Knight & Hines, $1,200.00. Signed G. W. Peckham. 1/8 1,000 acres Archer County, acreage Porter Ranch. Indorsed Knight & Hines. W. T. Knight by A. H. Herron. Paid 12-21-25.

PLAINTIFF'S EXHIBIT 59.

Wichita Falls, Texas, 12-21-1925 No. .... "5" The City National Bank of Wichita Falls. Pay to the order of Knight & Hines, $50.00. Signed G. W. Peckham. Balance cash payment 1000 acres Archer Co. Texas. Indorsed Knight-Hines (Perforated) Paid 1-2-26.

The Witness:
The instrument you now hand me is a copy of the deed to the M. L. Porter Ranch.

Mr. Humphrey:
We offer the deed in evidence, Plaintiff's Exhibit 60.

PLAINTIFF'S EXHIBIT 60.

Warranty deed No. 6813.

From M. L. Porter and wife, to W. T. Knight, et al.

Consideration $32,100.00, paid and secured to be paid by W. T. Knight, Harry Hines, J. T. Harrell, C. E. Basham, W. L. Robertson and Geo. W. Peckham, ten thousand dollars cash, and note No. 1 for $7,366.66, dated December 1, 1925, payable on or before a year from date.

Note No. 2, for $7,366.67, dated December 1, 1925, payable on or before two years from date.

948 Note No. 3, for $7,366.67, dated December 1, 1925, payable on or before three years from date, all notes bearing eight percent interest.

For the following described land,

Beginning at a stone marked P. J. B. for an inside corner of the Peter J. Bailey survey; Thence South 950

varas to the S. E. Corner; Thence North 89-25 W 951 varas, a stone for the Southwest corner Peter J. Bailey, Survey, Abstract No. 30; Thence West 1941 varas to stone in road, the Southwest corner J. Pointevant Survey No. 1 Abstract No. 348; Thence No. 0-30W 1600 varas to the Northwest corner of the J. Pointevant survey; Thence East in center of road 960 varas to inside corner; Thence North 457 varas to Northwest corner, a fence corner; Thence South 89-43 East along fence 1020 varas to corner; Thence North 25 varas to corner; Thence East 1295 varas to Northeast corner, in west line of Effic Stanford land; Thence South 1134.4 varas to South line of Peter J. Bailey Survey; thence West 345.2 varas to place of beginning, and containing 1070 acres.

The respective undivided interest of the above named grantees, in the land described in this instrument is as follows: $32.50 Rev. Stamps, attached and cancelled.

HARRY HINES,
1/4 Interest.
W. T. KNIGHT,
1/4 Interest.
J. T. HARRELL,
1/8 Interest.
949 C. E. BASHAM,
1/8 Interest.
W. L. ROBERTSON,
1/8 Interest.
GEO. W. PECKHAM,
1/8 Interest.

Dated December 1, 1925.

Duly acknowledged, December 1, 1925, by M. L. Porter, before J. C. Hays, a Notary Public Archer County, Texas.

Duly acknowledged by Mrs. S. J. Porter, wife of M. L. Porter, on December 1, 1925, before J. C. Hays, Notary Public Archer County, Texas.

Filed for record December 28, 1925, in Archer County, Texas.

Mr. Rogers:

We object to its introduction because the royalty company is not a party grantee in it, and there is no showing that any of the original purchase price went into the payment of the property, nor is it otherwise shown that the Wichita Royalty Company is a party thereto, and the matter relates to an extraneous transaction and is not binding upon the trust. Also the reasons heretofore stated.

(Which objections were by the Court overruled, to which the Defendant then and there excepted)

The Witness:

I examined the records and ledger and journal entries, and copies of vouchers of the Wichita Royalty Company as to whether or not the Wichita Royalty Company carried this 1/8 in the Porter Ranch on its books as its assets. I will look and see when they set them up.

Mr. Rogers:

I wish to add to my objection, that there is no memorandum in writing signed by G. W. Peckham, of
950 any kind or character sufficient to charge this property with a trust in favor of the Wichita Royalty Company, or otherwise to make it the property of anyone other than G. W. Peckham who purchased it individually on December 1, and charged the Wichita Royalty Company therewith on December 28.

(Which objection was by the Court overruled, to which the defendant then and there excepted)

The Witness:

This is to set up in journal entry No. 2, December 1, 1935, royalties owned, notes payable $2,762.50, to set

up balance due royalty No. 83, being one eighth of the land and fee royalty in 1,070 acres M. L. Porter land, Archer County, Texas. $1,250.00 cash and the balance of $2,762.00 and equal payments one, two and three years. This 1,070 acres was purchased at thirty dollars per acre by Knight and Hines, and we secured one-eighth interest as above outlined. I don't know whose handwriting that is in. I found under producing royalties owned in their ledger, dated December 31, 1925, No. 83, and it is journal entry No. 18, $2,762.50. I also find, under ledger of date December 28, property No. 83, check No. 451, $1,200.00 Porter Ranch, as well as the voucher. There are some other items later on with reference to deferred payments. Shows how much was owing, $2,762.50; in other words, the deferred consideration accurately sets out the pro rata part of the royalty company of the deferred notes.

951 Mr. Humphrey:

We offer in evidence the Journal entry on the item, and ask that it be photostated.

(Marked "Plaintiff's Exhibit No. 61" as follows:)

PLAINTIFF'S EXHIBIT 61.

1925.		JE 18.
Dec 31 Royalties Owned	2762.50	
Notes payable		2762.50

To set up balance due on royalty #83 being 1/8 of the land and fee royalty in 1070 acres M. L. Porter Land Archer County, Texas. $1250.00 cash and balance $2762.50 in equal payments 1, 2 and 3 years. This 1070 acres was purchased at $30.00 per acre by Knight & Hines and we secured 1/8 interest as above outlined.

952 Mr. Humphrey:

We also offer in evidence the ledger, and ask that it be photostated.

PLAINTIFF'S EXHIBIT 62.

Name: Producing Royalties Owned.

Address: .....

Date 1925	Items	Fol.	Debits	Date 1925	Items	Fol.	Credits
June 1		JE1	846,033.17	Nov. 10	#Contra	148	1,500.00
24	#80 Anderson...	385	6,000.00	May 31	83	JE36	4,012.50
29	#80 Anderson...	387	5,000.00	31	.....	JE43	886,802.24
Oct. 8	#81 Callahan Co.	427	2,500.00				
8	#82 Pankonin...	427	1,500.00				
8	#.. Contra	427	1,500.00				
Dec. 28	#83 Porter	451	1,250.00				
Jan. 4	#84 Stephens ...	452	5,000.00				
Dec. 31	#83 Porter	JE18	2,762.50				
Jan. 11	#84 Wilbarger ..	458	5,000.00				
18	#84	461	15,769.07				
			892,314.74				892,314.74

953 The Witness:

The copy of the letter mailed the stockholders of the Wichita Royalty Company, Defendant's Exhibit 26, states, "Since our July 15 report, we have made the following new purchases, among which is a one-fourth of the royalty in the east thirty acres out of the Milligan Survey, or Mathis Addition to the town of Cross Plains, Callahan County," That is the same deed representing the $2,500.00 purchase on item check 427. One eighth of royalty in 220 acres out of Abstract 1700 and 1701 of the E. Pankonin Survey, Kunkle land, Young County, is the item on check 427. And, one-eighth of the land and royalty in 1070 acres, M. L. Porter land in Archer County, cost $1,250.00 cash and $2,762.50 in equal payments, due one, two and three years from the date of purchase, signed by Wichita Royalty Company. Those are the properties you asked me about.

The Porter Ranch is located south and west of Archer City, in an oil producing territory. I examined the records with reference to the returns on the Porter Ranch. I have a check dated July 26, 1926, payable to Wichita Royalty Company for $111.67, signed G. W. Peckham, and says, "Rental on Porter Ranch." "For deposit only, G. W. Peckham trustee, Wichita Royalty Company, Wichita Falls, Texas."

Mr. Humphrey:

We offer the check in evidence.

PLAINTIFF'S EXHIBIT 63.

Dated Wichita Falls, Texas 7-26-1926 The City National Bank, Wichita Falls. Pay to the order of Wichita Royalty Company, $111.67. This check is in full
954 settlement as shown here. Acceptance by indorsement constitutes receipt in full. Rental on Porter Ranch. Signed G. W. Peckham. (Indorsed) for Deposit only, G. W. Peckham as trustee Wichita

Royalty Company, 509 Security National Bank Bldg., Wichita Falls, Texas. Perforated paid 7-27-26.

The Witness:

That check was deposited to the Wichita Royalty Company's account. Mr. W. T. Knight handled this property for the joint owners, from my investigation. He lives here in Wichita Falls. Harry Hines is a partner of W. T. Knight, he also lives in Wichita Falls. Mr. Hines is chairman of the State Highway Commission of the State of Texas.

I now have original record of cash received No. 171, Wichita Royalty Company, with reference to the item of $111.67 Plaintiff's Exhibit 63, it shows revenue from the M. L. Porter Ranch, Archer County, Texas. Shows, "Our proportion 1/8 of lease rentals and miscellaneous revenues." It reflects receipt of this $111.67. You also now hand me two other checks.

Mr. Humphrey:

We offer the checks in evidence.

PLAINTIFF'S EXHIBIT 64.

Wichita Falls, Texas, 11-26-1928. The City National Bank of Wichita Falls. Pay to the order of W. T. Knight, $21.63. "6" Signed G. W. Peckham. Interest on note on Porter Ranch Indorsed W. T. Knight, Knight & Hines, Perforated Paid 11-26-28.

955 PLAINTIFF'S EXHIBIT 65.

Wichita Falls, Texas 12-5-27. The City National Bank, Wichita Falls. Pay to the order of W. T. Knight, $147.33. This check is in full settlement as shown hereon. Acceptance by indorsement constitutes receipt in full. Interest to 12-1-27 on unpaid bal Porter

Ranch Archer Co. Signed G. W. Peckham. Indorsed W. T. Knight. Perforated Paid 12-8-27. "5".

The Witness:

Those two checks, Plaintiff's Exhibits 64 and 65, represent payments that Mr. Peckham made for interest and taxes on 1/8 interest in the Porter Ranch and the Royalty Company books and records show that they reimbursed him for that exact amount. I find other payments made on the note which will come in later.

Checks Nos. 452, 458 and 461, were transferred to the individual account of G. W. Peckham, on the books and records of the Wichita Royalty Company. I have the deposit slip for those three items; I have three deposit slips, representing two items, $5,000.00 each and the other of $15,769.00. Those are in the handwriting of G. W. Peckham, all three of them. I don't think two of these are in the handwriting of any teller or officer of the City National Bank. Teller No. 7 handled the five thousand dollar item. Teller No. 8 handled the January 4, 1926 item. Teller No. 7 handled the $5,000.00 item. I do not know who teller No. 7 was without looking at the records. Teller No. 8 handled the third item.

956 Mr. Humphrey:

We offer in evidence the three deposit slips, marked "Plaintiff's Exhibit 66, 67 and 68" as follows:

PLAINTIFF'S EXHIBIT 66.

City National Bank, Deposited by G. W. Peckham. Wichita Falls, Texas, 1-4-1926. Checks as follows: "8" B 5,000.00.

PLAINTIFF'S EXHIBIT 67.

City National Bank, Deposited by G. W. Peckham. Wichita Falls, Texas, 1-11-1926. Checks as follows: "7" 5,000.00.

PLAINTIFF'S EXHIBIT 68.

City National Bank, Deposited by G. W. Peckham. Wichita Falls, Texas, 1-18-1926. Checks as follows: Wichita Royalty Co. $15,769.07. "B" "8"

The Witness:

I imagine that about three thousand deposit slips were taken in at that time in one days business at the City National Bank, which included different items. This volume of deposit slips from which I have secured these particular ones, is about one foot thick. I have examined the voucher accompanying those three checks, from the records of the Wichita Royalty Com-
957 pany. The first one shows, check No. 452, dated January 4, 1926, payable to G. W. Peckham for $5,000.00 and says, "Producing royalties on No. 84, to purchase of royalty under the—" that is all there is on it. The notation on the side is "Stephens Royalty, deposited to the credit of G. W. P." The voucher book is kept in the Wichita Royalty Company file. The next voucher, $5,000.00 says, "Producing Royalties," and in ink it says No. 84, and under it in pencil, "Stephens Royalty, deposited credit of G. W. P." I do not know whether the pencil marks were on there at the time the voucher was or not. The $15,000.00 voucher says, "Purchase of one-fourth royalty under Stephens Royalty forty acres operated by Staley, et al, and Barclay and Meadows, in the south Vernon field, total cost $25,769.07, less $10,000.00 paid." That is in carbon, and the original typing says, "See our checks Nos. 452 and 458." I never saw the original voucher. The Stephens Royalty is located in the south Vernon field.

Defendant's Exhibit 8 is the original deed from J. T. Harrell and C. E. Basham to the Wichita Royalty Company, conveying a quarter int st in an overriding royalty in property in Wilbarger ounty, as shown by the description in Defendant's Exhibit A. I examined to see how much Mr. Peckham advanced of his own

money and property in payment of Basham and Harrell for that royalty, which is $22,201.32, he paid his half interest in the Curlee land for $3,567.75, making a total of $25,769.07. That corresponds with the amount
958 that the Wichita Royalty Company transferred to Mr. Peckham's account; Mr. Peckham paid some interests on those deferred payments. I will give a full detail of the Stephens Royalty transaction from my records, that is, the royalty company records, and the bank records, and Mr. Harrell and Mr. Basham's records, and the Curlee records, and Peckham's records, as follows: On January 4, 1926, the Wichita Royalty Company gave their check No. 452, for $5,000.00; on January 11, 1926, they gave their check No. 458 for $5,000.00. On January 18, 1926, they gave their check No. 451, for $15,769.07. There is a total consideration transferred to Mr. Peckham's account of $25,769.07. Mr. Peckham paid to J. T. Harrell and C. E. Basham on January 16, 1926, $2,201.32; on January 25, 1926, he paid them $10,028.00, $10,000.00 principal and $28.00 interest; on March 6, 1926, he paid them $5,060.00, $5,000.00 principal and $60.00 interest; on March 31, 1926, he paid them $5,087.00, $5,000.00 principal and $87.00 interest; the total is $22,376.32. He gave them a deed to his half interest in the Curlee land, consideration $3,567.75. That made a total for the Stephens Royalty, $25,944.07, that he paid J. T. Harrell and C. E. Basham for that property.

The following checks are the ones I have recited, that Peckham made as payment for that property. Those checks were paid by the City National Bank and charged to Mr. Peckham's individual account.

959 Mr. Humphrey:

We offer the checks in evidence, marked "Plaintiff's Exhibits 69, 70, 71 and 72," as follows:

PLAINTIFF'S EXHIBIT 69.

Wichita Falls, Texas 1-25-26 "4" The City National Bank of Wichita Falls. Pay to the order of J. T. Harrell and C. E. Basham, $10,028.00. (Signed) G. W. Peckham. Indorsed J. T. Harrell CEB C. E. Basham. Perforated Paid 1-25-26.

PLAINTIFF'S EXHIBIT 70.

Wichita Falls, Texas, March 6, 1926 No... "18" The City National Bank of Wichita Falls. Pay to the order of J. T. Harrell & C. E. Basham, $5,060.00. Signed G. W. Peckham. Indorsed J. T. Harrell C. E. Basham. Perforated Paid 3-6-26.

PLAINTIFF'S EXHIBIT 71.

Wichita Falls, Texas, January 15, 1926 No. .... "4" The City National Bank of Wichita Falls. Pay to the order of J. T. Harrell & C. E. Basham, $2,201.32. Signed G. W. Peckham Indorsed J. T. Harrell C E Basham Vernon Royalty (Perforated) Paid 1-16-26.

PLAINTIFF'S EXHIBIT 72.

Wichita Falls, Texas, March 31, 1926. No. .... "18" The City National Bank of Wichita Falls (in pencil) OK JR PD 5087.00 Pay to the order of J. T. Harrell and Geo. W. Peckham $5087.00 (Signed) G. W. Peckham (Indorsed) J. T. Harrell C. E. Basham Perforated Paid 4-1-26.

960 The Witness:

Check dated January 25, 1926 was charged against G. W. Peckham's account on the same day; check

dated March 6, 1926, canceled paid the same day; check dated January 15, 1926, canceled paid on January 16, 1926; check dated March 31, 1926, canceled on April 1, 1926.

The deed which you now hand me is the deed which Mr. Peckham gave Mr. Harrell and Mr. Basham a half interest in what is known as the Curlee land, near Wichita Falls, Texas, about forty acres. Mr. Peckham acquired that land from W. S. Curlee. This deed is from W. S. Curlee to Peckham and Harrell.

Mr. Humphrey:

We offer both of these deeds in evidence, marked "Plaintiff's Exhibits 73 and 74"

PLAINTIFF'S EXHIBIT 73.

Deed from W. S. Curlee to J. T. Harrell, et al.

Consideration $7,628.00, as follows: $4,814.00 cash in hand paid, and the assumption of Note No. 1 for $1,000.00 due in one year after August 24, 1925; note No. 2, for $1,000.00 due in two years after August 24, 1925; note No. 3 for $814.00, said note described in deed from Joe Kerr, filed of record Volume 250, page 334, Wichita County Records.

Conveying all that certain block No. 7 in the Sayles Subdivision of the south one-half of northeast one-fourth of J. A. Scott Survey No. 10, Abstract No. 302, being further described as follows, to-wit: Beginning at the Northeast corner of Block No. 8, the same being the Northwest corner of this Block No. 7, J. A. Scott.

961 Survey, No. 10; Thence East 1324.3 feet to the Northeast corner of Block No. 7; Thence South 0° 08′ East 1327.1 feet to the Southeast corner of said Block No. 7; thence South 89° 46′ West 1333.1 feet to the Southwest corner thereof; Thence North 0° 06′ East 1331.2 feet to the place of beginning.

and containing 38.14 acres of land more or less, exclusive of a 20 foot strip reserved for road right of way together with all improvements, situated thereon.

Dated January 8, 1926.

Revenue stamps, $5.00.

Duly acknowledged by W. S. Curlee on January 8, 1926, before Clarice Brown, Notary Public in and for Wichita County, Texas.

Filed for record January 11, 1926 at 8:00 A. M.

Recorded January 14, 1926, at 3:35 P. M. in volume 243, page 577, Deed Records of Wichita County, Texas.

PLAINTIFF'S EXHIBIT 74.

Deed G. W. Peckham to J. T. Harrell, et al

Consideration $10.00 cash and the assumption of Note No. 1 for $1,000.00 due in one year after August 24, 1925; Note No. 2, for $1,000.00 due in two years after August 24, 1925, and Note No. 3, for $814.00, said notes described in deed from Joe Kerr filed for record in Volume 250, page 334, Wichita County, Texas.

Conveying unto J. T. Harrell and C. E. Basham, undivided one-half interest in and to: Tract of parcel of land, known as block No. 7 of Sayles Subdivision of the South half of the Northeast one-fourth of J. A. Scott Survey No. 10, Abstract No. 302, being
962 further described as follows, to-wit:

Beginning at the Northeast corner of Block No. 8, the same being the Northwest corner of this Block No. 7, J. A. Scott Survey No. 10; Thence East 1324.3 feet

to the North east corner of Block No. 7; Thence South 0° 08′ East 1327.1 feet to the Southeast corner of said block No. 7; Thence South 89° 46′ West 1333.1 feet to the Southwest corner thereof; Thence North 0° 06′ East 1331.2 feet to the place of beginning, and containing 38.14 acres of land more or less, exclusive of a 20 foot strip reserved for road right of way, together with all improvements situated thereon.

Dated January 23, 1926.

Duly acknowledged by G. W. Peckham, January 23, 1926, before Ethel Covington, Notary Public in and for Wichita County, Texas.

Filed for record January 26, 1926, at 8:00 A. M.

Recorded January 28, 1926, at 3:23 A. M. in Wichita County, Texas, Volume 254, page 326 of the Deed Records.

Agreement.

It is agreed, that on October 12, 1925, the books of E. C. DeMontel show that he rendered an opinion to G. W. Peckham, on 71 acres of the D. Milligan Survey, Callahan County, Texas, and charged him $25.00 for it and he rendered a bill for it, and other work that was paid on 11-3-25, in the amount of $71.00.

The Witness:

That is the same E. C. DeMontel that I verified the $25.00 charge on the Cross Plains, D. Milligan-
963 Meadows tract.

I do not know the value of the Curlee land, property values were quite active around Wichita Falls at that time.

Defendant's Exhibit 27, which is a letter to the stockholders of the Wichita Royalty Company, and heretofore introduced in evidence is the same property known as

the Stephens property which I have been asked about, the letter is dated March 15, 1927.

I have not examined the books of the Wichita Royalty Company and other evidences to ascertain what amount of oil had been produced from that sixty acres, known as the Stephens lease; I have a record of the runs on that lease, and another interest up there. From the compilation of the oil runs of a like interest, the interest of Dan Bond, a citizen of Vernon, the records show that Dan Bond, J. T. Harrell and C. E. Basham originally owned this royalty. Mr. Bond did not sell out when Mr. Harrell and Mr. Basham sold, I took the interest he had and compiled the oil runs from that interest, which was identical with Mr. Basham and Mr. Harrell, which was sold to them by Mr. Peckham. There is one twenty acres of Mr. Bond's interest, from May, 1925, to December, 1930, Paid $49,890.18, and the other twenty acres, from March, 1925 to February, 1927, Paid $25,549.41. The total of both interests being $75,439.59.

I have a photostatic copy of the ledger of the Wichita Royalty Company showing the sale of the Stephens Royalty April 1 1930. It says, "Cash, Humble,
964 $500.00. April 1, 1930, sale price, Barclay and Meadows, Journal entry No. 14, $2,750.00." A total of $3,250.00. On April 1, it recites cash from the Humble of $125.00, journal entry No. 13.

This is the three checks for the purchase price of the Stephens Royalty, No. 452, 458 and 461. The records of the Wichita Royalty Company show that those funds were accepted and used for the purchase of this Stephens Royalty. The books and records of the Wichita Royalty Company show that they carried this as an asset of the Wichita Royalty Company from the time they acquired it up until the time they sold it in 1930. Said records also show that they currently received the oil runs and proceeds from the oil runs, from this royalty from 1926 up until the time they passed their title to it in 1930. Check No. 478 is another transfer of funds from the account of Wichita Royalty Company to the in-

dividual account of George W. Peckham. It is dated 3-6-26 and in the amount of $17,623.70. I have the original deposit slip. I also have check No. 479 for $6,000.00. I am familiar with both of those checks, they aggregate $23,623.00. This number 478 is signed by E. E. Scannell and drawn on the account of the Wichita Royalty Company in the City National Bank, for $17,623.70; check 479 for $6,000.00, drawn on account of the Wichita Royalty Company in the City National Bank by E. E. Scannell, payable to the order of the Security National Bank. I am familiar with both of those checks.

965 Mr. Humphrey:

We offer in evidence the deposit slip.

PLAINTIFF'S EXHIBIT 75.

City National Bank Deposited by G. W. Peckham Wichita Falls, Texas 3-6-1926 Checks as follows: "8" "D" $17,623.70.

The Witness:

Mr. Bomar took that deposit, I will tell the history of that transaction; on March 6, 1926, G. W. Peckham acquired a quarter interest in this property from W. H. Peckham for a cash consideration of $11,811.85; to this quarter interest he added his quarter interest acquired originally by him from the Highland Irrigation Company under date of September 18, 1925, and January 8, 1926, transferred his entire half interest to the Wichita Royalty Company by deed dated, by acknowledgment April 10, 1926, for a consideration arrived at as follows: "Cost of one-fourth interest, bought 3-12-26, $11,811.85, the value of half interest based on above cost, the sum of—value of one-half interest based on one-half cost, of one-fourth interest, $23,623.70". Of the $23,623.70 paid to G. W. Peckham by the Wichita Royalty Company

for this property, $17,623.70 was deposited to his account at the City National Bank, and the remaining $6,000.00 was deposited to his account at the Security National Bank. I say deposited to his account at the Security National Bank, because I have Mr. Peckham's statement of his account with the Security National Bank,
966 whereby on March 9, 1926 there was a deposit to his account of $6,000.00; that was the date of the check No. 479. This check was cleared on the City National Bank and paid the following date, on March 10, 1926. This check was payable to the Security National Bank. Defendant's Exhibit No. 11, the statement secured from the file of G. W. Peckham, of the Security National Bank, shows this deposit. I have a check dated March 1, 1926, payable to the order of W. H. Peckham, $11,811.85, signed G. W. Peckham with the notation, "Marlborough Addition." The check is indorsed by W. H. Peckham and paid on March 9, 1926. I do not have the deed from W. H. Peckham to G. W. Peckham.

Mr. Rogers:

The record discloses an objection of the Wichita Royalty Company to all testimony relating to transactions which G. W. Peckham had with himself as trustee, in the matter of Marlborough Addition, except the transfer of funds to his account and it having been agreed that such objection might be carried through the trial. Such objections are here renewed under the agreement that they may apply throughout the trial as to all witnesses.

(Which objection was by the Court overruled, to which the defendant then and there excepted)

Mr. Humphrey:

Yes, we agree that these objections which you urge, that the transactions between the Royalty Company and Peckham individually relate to all of the testimony offered, without renewing your objection every time.

Mr. Humphrey:

We offer in evidence the deed from W. H. Peckham dated March 6, 1926, filed March 25, 1926, on
967 page 907 of the record on the other trial.

(Marked "Plaintiff's Exhibit 76" and reading as follows:)

PLAINTIFF'S EXHIBIT 76.

Deed Filed March, 25th, 1926.

Dated March 6th, 1926.

$12.00 R. S. Affixed and canceled.

Recorded April 5th, 1926 in Volume 261, pages, 29, 30 and 31.

Grantor: W. H. Peckham.

Grantee: G. W. Peckham.

Consideration $1.00 and other valuable considerations.

. . . . . .

sold and conveyed and by these presents does grant, sell and convey unto said G. W. Peckham all of his rights, title and interest, being an undivided one fourth (1/4) interest, in and to all those certain lots, tracts and parcels of land situated in Wichita County, Texas, and described as follows, to-wit:

Tract No. 1: Being 51.59 acres of land out of the Cyrus Eakman Survey, and described by meates and bounds as follows, to-wit:

Beginning at a stake for the common corner of block 17, 18, 37 and 38 of Highland Irrigation Subdivision, which stake is 1076.2 feet West and 3237.6 feet south

from the North East corner of Cyrus Eakman Survey;
thence West 1076.2 feet, a stake from the South-
968 west corner of Block 47 of said Irrigation Sub-
division; thence South 115 feet to a stake in center of Avenue "X," thence North 82 degrees and 40 minutes west with center line of Avenue "X," 91.2 feet to a stake in center of Taylor Street; thence North 7 degrees and 20 minutes East with center line of Taylor street 890 feet to a stake; thence North with center line of Taylor Street 641.3 feet to a stake in North line of Avenue "U," thence East 30 feet to a stake for the Southwest corner of Lot eight (8) Block Eleven (11), Southside addition; thence North with the West line of said Lot eight (8), 134 feet to a stake in South line of Lot Four (4), Block Thirty Two A (320A0 Highland Addition; thence South 82 degrees and 40 minutes East 72.4 feet to an iron pipe in center of Taylor Street; thence North 7 degrees and 20 minutes East with center line of Taylor street 30.3 feet to iron pipe under fence; thence East 1194.5 feet a stake; thence South 155 feet for Southwest corner of Lot Seventeen (17, Block Nine (9), Southwide addition; thence East 50 feet to a stake for southeast corner of said Lot Seventeen (17); thence South along West line of Cotton street 654.4 feet to a stake for Southeast corner of Block Twenty (20) of said Southside Addition; thence East 6.8 feet to stake for Northwest corner of Block Nineteen (19) and Northeast corner of Block Thirty Six (36) of said Highland Irrigation Sub-
division; thence South 809.4 feet to the place of
969 beginning, containing Fifty one (51.59) and
59/100 acres of land, and comprising Lots Ten (10) to Sixteen (16) inclusive in Block Nine (9) Lots One (1) to eight (8) inclusive, in Block Ten (10) Lots one (1) to eight (8) inclusive in Block Eleven (11); and all of Block Number Thirteen (13); all of Block Number Fourteen (14); all of Block Number Fifteen (15); all of Block Number Twenty (20); all of Block Twenty One (21); and all of Block Number Twenty Two (22); all being out of the Southside addition to Highland

Addition to the City of Wichita Falls, Texas, and also comprising the following:

All of Block Number Thirty Six (36); all of Block Number Thirty Seven (37); all of Block Number Forty Seven (47); all of Block Number Forty Eight (48); all of Block Number Seventy Seven (77); and all of Block Number Seventy Eight (78) of the Highland Irrigation Subdivision according to the maps or plats duly recorded in the Deed Records of Wichita County, Texas.

Tract No. 2; Being 6.06 acres of land out of the Cyrus Eakman Survey, and described by metes and bounds as follows, to-wit:

Beginning at a stake for the Northwest corner of Lot 2, Block 12, Southside Addition to Highland addition; thence North 7 degrees and 20 minutes east 30 feet to stake in center of Avenue "U"; thence East with the center of said Avenue "U". 145.2 feet to a stake; thence South with center line of Taylor Street, 611.3 970 feet to a stake; thence South 7 degrees 20 minutes West with the center line of Taylor Street 890 feet to a stake in center of Avenue "X", same being the Southwest corner of a tract of 51.59 acres heretofore deeded to parties herein named; thence North 82 degrees and 40 minutes west with center of Avenue "X" 190 feet to a stake; thence North 7 degrees and 20 minutes east with center line of alley 920 feet to a stake; thence South 82 degrees and 40 minutes east 10 feet to a stake; thence North 7 degrees and 20 minutes east with west line of Lot 2, Block 23, of said Southside Addition, 202 feet to a stake in center of Allen Avenue; thence North 82 degrees and 40 minutes west with center of said Allen avenue 50 feet to a stakel thence North 7 degrecs and 20 minutes east with the west line of lots 23 and 2, block 12 of said Southside Addition, 355 feet to the place of beginning. containing 6;06 acres of land and comprising the East one-half of Blocks Nos. 40-a and 41-a of the Highland addition to the City of Wichita Falls. and also Lots 1, 2 and 23 and 24, Block 12, and Lots 1 and 2 of Block 23 of the Southside addition.

This conveyance is expressly made subject to the indebtedness against said tracts and each of them secured by vendor's liens retained and described in two certain deeds from the Highland Irrigation Company to J. A. Kemp, W. H. Peckham, G. W. Peckham, and J. T. Harrell; said deed covering tracts No. 1 above described being dated September 19th, 1925, and recorded in deed records of Wichita County, Texas, in Volume 249, at page 5, and said deed covering tracts No. 2,
971 above described being dated January 8th, 1926 and recorded in the Deed records of Wichita County, Texas in Volume 255 at page 260, as a part of the consideration for this conveyance the said G. W. Peckham assumes and agrees to pay one fourth (1/4) of the indebtedness to the Highland Irrigation Company described in said deeds, and to save the said W. H. Peckham harmless from any liability on said vendor's lien notes.

Duly acknowledged.

Mr. Humphrey:
Also offer in evidence a check payable to W. H. Peckham, dated 3-1-26, signed G. W. Peckham, for $11,811.85.

(Marked "Plaintiff's Exhibit 77" as follows:

PLAINTIFF'S EXHIBIT 77.

(Check) 88-130 11 Wichita Falls, Texas 3-1-1926 No. .... "8" The City National Bank of Wichita Falls (In pencil PK-47 "8" Pay to the order of W. H. Peckham $11,811.85 Eleven thousand and eight hundred eleven and 85/100 Dollars "Marlborough Add." (Signed) G. W. Peckham (Indorsed) W. H. Peckham (Perforated) Paid 3-9-26.

The Witness:

That is W. H. Peckham's indorsement on the back of that check.

I have here check No. 478 for $17,623.70, the voucher notation shows, and in original typing, Real Estate city property to apply on purchase of one-half undivided interest in Marlborough Addition, consisting of 252 lots to the City of Wichita Falls, total consideration $49,566.20. This check No. 478 for $17,623.70 and check No. 479 of this date, for $6,000.00 represents the total cash consideration. For the balance of consideration our interest is subject to $23,215.50, due in one, two and three years from September 19, 1925, and $2,727.00 due in one, two and three years from January 8, 1927. This indebtedness being secured by twelve vendor lien notes against the property which draw eight percent per annum, and payable to the Highland Irrigation Company, see journal entries 27 and 28, March 6, 1926.

Voucher notation on check No. 479, payable to the Security National Bank for $6,000.00, reads, "Real estate city property, to apply on purchase of one-half undivided interest in the Marlborough Addition, consisting of 252 lots to the City of Wichita Falls, Texas. Total consideration, $49,566.20." This check No. 479, and check 478, represents the total cash consideration. our interest is subject to $23,215.50, due in one, two and three years from September 19, 1925, and, $2,727.00 due in one, two and three years from January 8, 1927. This indebtedness being secured by twelve vendor's lien notes against the property, which draw eight percent interest, and are payable to the Highland Irrigation Company. See Journal Entries Nos. 27 and 28, March 6, 1926. Those references to vendor's lien notes correspond with the original deed from Highland Irrigation Company to Kemp, Harrell, W. H. Peckham and G. W. Peckham; the four joint owners originally acquired this property from the Highland Irrigation Company in two sales, and got the deeds.

Mr. Humphrey:

We offer in evidence the two deeds, Highland Irrigation Company to J. A. Kemp, W. H. Peckham, G. W. Peckham and J. T. Harrell, the first dated December 9, 1925, Plaintiff's Exhibit 78.

974 PLAINTIFF'S EXHIBIT 78.

Deed.

Dated Sept. 19, 1925.

Highland Irrigation Co. to J. A. Kemp, et al.

The State of Texas,
County of Wichita.

Know all Men by these Presents:

That the Highland Irrigation Company, a corporation duly incorporated under the laws of the State of Texas, and having its principal office and place of business in Wichita Falls, Wichita County, Texas, for and in consideration of the sum of Sixty One Thousand Nine Hundred Eight ($61,908.00) and no/100 Dollars to it paid and secured to be paid by J. A. Kemp, W. H. Peckham, G. W. Peckham and J. T. Harrell, as follows:

$15,477.00 cash in hand paid, the receipt of which is hereby acknowledged, the balance of said consideration being evidenced by six (6) certain vendor's lien notes bearing even date herewith, in the principal sum of $7,738.50 each, payable to the order of the Highland Irrigation Company, two (2) of said notes being due one year from date, two (2) of said notes being due two years from date and two of said notes being due three years from date, respectively, bearing interest from date at the rate of eight 8% per cent per annum and ten (10%) per annum from maturity and providing for the usual ten per .... attorney's fee clause.

Have granted, sold and conveyed and by these presents do grant, sell and convey unto the said J. A. Kemp, W. H. Peckham, G. W. Peckham and J. T. Harrell, of the County of Wichita and State of Texas, all those certain lots, tracts or parcels of land situated in Wichita County, Texas, being 51.59 acres of land out of the Cyrus Eakman Survey and described by metes and bounds as follows, to-wit:

975 Beginning at a stake for the common corners of Blocks 17, 18, 37 and 38 of Highland Irrigation Subdivision, which stake is 1076.2 feet west and 3237.6 feet South from the North East corner of Cyrus Eakman Survey; Thence West 1072.2 feet a stake for the Southwest corner of Block 47 of said Irrigation Subdivision; Thence South 115 feet to a stake in center of Avenue "X"; Thence North 82 degrees and 40 minutes West with center line of Avenue "X" 391.2 feet to a stake in center of Taylor Street; Thence North 7 degrees and 30 minutes East with center line of Taylor Street 890 feet to a stake; Thence North with center line of Taylor Street 641.3 feet to a stake in North line of Avenue "U"; Thence East 30 feet to a stake for the Southwest corner of Lot Eight (8) Block Eleven (11), Southside Addition; Thence North with the West line of said Lot Eight (8), 134 feet to a stake in South line of Lot (4) Four, Block Thirty Two A (32-A) Highland Addition; Thence South 82 degrees and 40 minutes East 72.4 feet to an iron pipe in center of Taylor Street; Thence North 7 degrees and 20 minutes East with center line of Taylor Street 30.3 feet to an iron pipe under fence; Thence East 1194.5 feet to a stake; Thence South 155 feet a stake for the Southwest corner of Lot Seventeen (17), Block Nine (9) Southside Addition; Thence east fifty feet to a stake for Southeast corner of said Lot Seventeen (17); Thence South along West line of Cotton Street 654.4 feet to a stake for Southeast corner of Block Twenty (20) of said Southside Addition; Thence East 6.8 feet to a stake for Northwest corner of Block Nineteen (19) and Northeast corner of Block Thirty Six (36)

of said Highland Irrigation Subdivision; Thence South 809.4 feet to the place of beginning, containing Fifty One (51.59 and 59/100 acres of land and comprising lots Ten (10) to Sixteen (16) inclusive in Block Nine (9), Lots One (1) to Eight (8) inclusive in Block Ten (10), Lots One (1) to Eight (8) inclusive in Block Eleven (11), All of Block Number Thirteen (13); All of Block Number Fourteen (14); All of Block Number Fifteen (15); all of Block Number Twenty (20); all of Block Number Twenty One (21); and all of Block Number Twenty Two (22). All being out of the Southside Addition to
976 the City of Wichita Falls, Texas, and also comprising the following:

All of Block Number Thirty Six (36); All of Block Number Thirty Seven (37); All of Block Number Forty Seven (47); All of Block Number Forty Eight (48); All of Block Number Seventy Seven (77), and All of Block Number Seventy Eight (78) of the Highland Irrigation Subdivision according to the maps or plats duly recorded in the Deed Records of Wichita County, Texas.

To Have and to Hold (etc. retaining vendor's lien).

Dated 19th day of September, A. D. 1925.

HIGHLAND IRRIGATION COMPANY,
By FRANK KELL,
(Corp. Seal) Vice President.

Attest:
C. M. CROWELL,
Ass't Secretary.

($62.00 Revenue Stamps affixed and canceled.)

Duly Acknowledged.

Filed Sept. 25, 1925, 8 AM.

Recorded Vol. 249, page 5, Deed Records of Wichita County, Texas.

Mr. Humphrey:

We next offer in evidence the deed dated January 8, 1926.

PLAINTIFF'S EXHIBIT 79.

Deed.

Dated Jan. 8, 1926.

Highland Irrigation Co. to J. A. Kemp, et al.

The State of Texas,
County of Wichita.

Know all Men by these Presents:

That the Highland Irrigation Company, a corporation, duly incorporated under the laws of the State of Texas, and having its principal office and place of business in the City of Wichita Falls, Wichita County, Texas, for and in consideration of the sum of Seven Thousand Two Hundred Seventy Two and no/100 ($7,272.00) Dollars, to it paid and secured to be paid by J. A. Kemp, W. H. Peckham, G. W. Peckham and J. T. Harrell as follows:

977

$1,818.00 cash in hand paid the receipt of which is hereby acknowledged, and the balance of said consideration being evidenced by six (6) certain Vendor's Lien notes bearing even date herewith, each in the principal sum of $909.00 payable to the order of the Highland Irrigation Company at Wichita Falls, Texas, two (2) of said notes being due on or before one year from date, two (2) of said notes being due on or before two years

from date, and two (2) of said notes being due on or before three years from date, respectively, all of said notes bearing interest from date at the rate of eight (8%) per cent per annum, payable annually, 10% from maturity and providing the usual 10% attorney's fees clause.

Have granted, sold and conveyed and by these presents does grant, sell and convey unto the said J. A. Kemp, W. H. Peckham, G. W. Peckham and J. T. Harrell of the County of Wichita and State of Texas, all those certain lots, tracts or parcels of land lying and being situated in Wichita County, Texas, being 6.06 acres of land out of the Cyrus Eakman Survey, and described by metes and bounds as follows, to-wit:

Beginning at a stake for the NW corner of Lot 2, Block 12, Southside Addition to Highland Addition; Thence North 7 degrees and 20 minutes East 30 feet to stake in center of Avenue U; Thence East with the center of Avenue U 145.2 feet to a stake; Thence S, with center line of Taylor Street 611.3 feet to a stake; Thence 7 degrees 20 minutes West with center line of Taylor Street 890 feet to a stake in center of Avenue X, same being the SW corner of a tract of 51.59 acres heretofore deeded to parties herein named; Thence North 82 degrees and 40 minutes West with center of Avenue X 190 feet to a stake; Thence North 7 degrees 20 minutes East with center line of Alley 920 feet to [redacted] stake; Thence South 82 degrees and 40 minutes East 10 feet to a stake; thence North 7 degrees and 20 minutes east with West line of Lot 2, Block 23, of said Southside Addition 202 feet to a stake in center of Allen Avenue; Thence North 82 degrees and 40 minutes West with center of said Allen Avenue 50 feet to a stake; Thence North 7 degrees and 30 minutes East with the West line of Lots 23 and 2, Block 12 of said Southside Addition, 355 feet to the place of beginning, containing 6.06 acres of land, and comprising the East one half of Blocks Nos. 40-A and 41-A of the Highland Addition to

978

the City of Wichita Falls, Texas, and also Lots 1, 2, 23 and 24, Block 12 and Lots 1 and 2 of Block 23 of the said Southside Addition.

To Have and to Hold, etc. (Retaining vendor's lien).

Dated Jan. 8, 1926.

HIGHLAND IRRIGATION COMPANY,
By FRANK KELL,
(Corp. Seal) Vice President.

Attest:
C. M. CROWELL,
Asst. Sec'y.

($7.50 Revenue Stamps affixed and canceled.)

Duly acknowledged.

Recorded in Vol. 255, page 260, Deed Records of Wichita County, Texas.

(Filed Jan. 13, 1926, 8 AM.)

The Witness:

The Wichita Royalty Company preserved their original deeds in a special form envelope, it is a telescope envelope and opens at the top, special for muniments of title and records and such as that. I got the Marlborough Addition Deed, which has been offered in evidence, from the files of the Wichita Royalty Company. At that time I found the letter with reference to the deed, which has been offered in evidence, which was the first time I ever heard of it.

The next item is check No. 485.

Mr. Rogers:

We offer these checks in evidence, Defendant's Exhibits 111 and 112, as follows:

979 DEFENDANT'S EXHIBIT 111.

"8" Wichita Royalty Company No. 478.

Wichita Falls, Texas. (in pencil) 15, circled. March 6, 1926 (In pencil) Dep. to cr. of GWP 3-6-26—in red pencil $17,623.70. When properly indorsed pay to the order of City National Bank. To City National Bank, Wichita Falls, Texas. Wichita Royalty Company by E. E. Scannell for trustee. Indorsement hereon by
980 payee constitutes acknowledgment of full payment of the items listed on accompanying remittance statement. No other receipt required. Perforated Paid 3-6-26.

DEFENDANT'S EXHIBIT 112.

Wichita Royalty Company, No. 479.

(In pencil 16, circled. Wichita Falls, Texas, March 6, 1926. When properly indorsed pay to the order of Security National Bank, $6,000.00.

To City National Bank, Wichita Falls, Texas. Wichita Royalty Company by E. E. Scannell for trustee.

Containing the same indorsement as to payee as the former check.

(Stamped) Security National Bank Clearing House Paid ..... 1926.

(Indorsements guaranteed, Wichita Falls, Texas. Perforated Paid 3-10-26. "3".

The Witness:

Check No. 485, for $7,500.00 shows to have been transferred from the Royalty Company's account to Peckham's individual account. It is signed by E. E. Scannell and credit given to Mr. Peckham for that item on 3-3-26. The teller is No. 7, Richard Thomason.

Mr. Humphrey:

We offer the deposit slip in evidence.

PLAINTIFF'S EXHIBIT 80.

City National Bank, Deposited by G. W. Peckham, Wichita Falls, Texas, 3-31-1926.

Checks as follows:

"7" "RT" $7,500.00

981 The Witness:

The voucher notation with reference to check No. 485, shows, Real Estate improvements to apply on our one-half interest improving Marlborough Addition, Wichita Falls, Texas, improvements consisting of water, lights, gas, sewerage and grading and paving streets. The notation is from the bound volume of the voucher records by Wichita Royalty Company. I have never seen the original voucher. G. W. Peckham, on April 15, 1926, from his account at the Security National Bank paid to Marlborough Addition the sum of $7,500.00. I do not have the check, but I know it was paid because I have a slip in his statements that was dated April 15, 1926, payable to the Marlborough Addition for $7,500.00 and signed by G. W. Peckham. The check was offered in evidence on the former trial and has not been returned. It is marked "K-54." I have Mr. Peckham's statement for the month of April and part of May, that shows he paid $7,500.00 from his individual account with the Security National Bank. On April 16, 1926, there was a check

for the amount of $7,500.00 charged against his deposit account in that bank. I have a memorandum here that check was missing out of this statement and there is a memorandum enclosed, it shows 4-15-26, and says, "Conveyed 4-16-26, Marlborough Addition, $7,500.00, GWP" and across the face of it is the word "Security." That slip was in the statement when I got it, I do not know what handwriting it is. The statement I refer to is Defendant's Exhibit 12. I also made an investigation of the books of the Marlborough Addition and I have here a cash book of that Addition, cash receipts, and on
982 April 15, 1926, it shows "Security National Bank, G. W. Peckham, Investment $7,500.00," and on the ledger it shows, "Investment Account, G. W. Peckham." On the same day, April 15, 1926, $7,500.00. This shows that Mr. Peckham paid $7,500.00 to the Marlborough Addition for improvements on that date. I do not have the deposit slip, I have the ledger account, which shows the deposit of that amount on that date to the account of Marlborough Addition. The record of the Marlborough Addition also shows that on May 10, from the cash receipt books, J. A. Kemp investment $3,750.00, and his ledger account, J. A. Kemp, Investment account on May 10, shows credit of $3,750.00. The cash book shows the source of the amount and the interests. In other words, the cash book of the Marlborough Addition, the cash book receipt shows that Mr. Kemp on May 10, 1926, paid $3,750.00, shows credit on the ledger of that amount; shows Mr. Peckham paid on April 15, $7,500.00 and a credit on the ledger of that amount, on the books of the Marlborough Addition on the same date; and shows Mr. Harrell on May 10, 1926, paid $3,750.00, for the same purpose and in the same manner. The books of the Marlborough Addition shows these three interested parties, the Wichita Royalty Company, through Peckham, paid $7,500.00 and Kemp and Harrell paid $7,500.00 on this investment account, and that corresponds with the books of the royalty company showing an expenditure of that amount.

Mr. Rogers:
We offer these checks in evidence.

983 DEFENDANT'S EXHIBIT 113.

Wichita Royalty Company. No. 452. $5,000.00. "8" (In red pencil) #84. (In red pencil) Dep. to cr. of GWP. 1-4-26, Wichita Falls, Texas, January 4, 1925 (Corrected to 1926). Pay to the order of G. W. Peckham, $5,000.00. To City National Bank, Wichita Falls, Texas. (Signed) Wichita Royalty Company by E. E. Scannell, for trustee. Indorsed G. W. Peckham. Perforated Paid 1-4-26.

DEFENDANT'S EXHIBIT 114.

Wichita Royalty Company, No. 458. (In pencil) #84. Wichita Falls, Texas. (In pencil) 49, circled. January 11, 1926. Pay to the order of City National Bank, $5,000.00. To City National Bank, Wichita Falls, Texas. Wichita Royalty Company, by E. E. Scannell for trustee. Indorsement hereon, etc. (in red pencil) Dep. to cr. of GWP 1-11-26. "7" Paid 1-11-26.

DEFENDANT'S EXHIBIT 115.

Wichita Royalty Company, No. 461 (in pencil) #84. "8" Wichita Falls, Texas, January 18, 1926. (In red pencil) Dep. to cr. of GWP 1-8-26 (in pencil) 50, circled. Pay to the order of City National Bank, $15,769.07. To the City National Bank, Wichita Falls, Texas, Wichita Royalty Company by E. E. Scannell, for trustee. (Perforated) Paid 1-18-26. (Indorsement hereon, etc.)

984 DEFENDANT'S EXHIBIT 116.

Wichita Royalty Company, No. 485 (in pencil) Improve on Marl (red pencil) Dep. to cr. of GWP 3-31-26 "7" 19

in circle. Wichita Falls, Texas, March 31, 1926. Pay to the order of City National Bank, $7,500.00 To City National Bank, Wichita Falls, Texas. Wichita Royalty Company, by E. E. Scannell for trustee. Perforated Paid 3-31-26.

The Witness:

Check No. 495, payable to the City National Bank for $300.00, drawn on the City National Bank, this item was on April 23, 1926. This item was applied to pay the interest on Wichita Royalty Company note No. 72,690, amounting to $15,000.00 and held by the City National Bank. Said interest due and paid amounting to $300.00. The principal of the note, $15,000.00. This item did not pass through Mr. Peckham's account in any manner. It was handled by cage No. 19, which was the note loan and discount department, went to pay the interest on the note the Wichita Royalty Company owed the bank at that time. The ledger so shows. Mr. Peckham did not receive credit for this item. The voucher of the Wichita Royalty Company shows, interest, in payment of interest, on $15,000.00 borrowed on the City National Bank and so applied to that purpose.

I have also made an investigation with reference to checks numbers 503, 507, 510 and 519, totaling $10,000.00, 503 being for $3,000.00; 507 for $1,500.00; 510 for $4,500.00; 519 for $1,000.00. It shows that these amounts were transferred to the personal account of G. W. Peckham and charged against the account of the Wichita Royalty Company. I have the deposit slip showing the credit to G. W. Peckham. The deposit slip of $3,000.00 was handled by Teller No. 7; the next one for $1,500.00, teller No. 8. Teller No. 8 is Mr. Bomar, and Teller No. 7 is Mr. Thomason. The next one for $4,500.00 handled by teller No. 7, Mr. Thomason. Check No. 519 of $1,000.00 handled by teller No. 7, Mr. Thompson.

985

Mr. Humphrey:

We offer the four deposit slips in evidence, Plaintiff's Exhibits 81, 82, 83 and 84.

PLAINTIFF'S EXHIBIT 81.

City National Bank, Deposited by G. W. Peckham, 5-20-1926, Wichita Falls, Texas.

Checks as follows:

"7" $3,000.00

PLAINTIFF'S EXHIBIT 82.

City National Bank, Deposited by G. W. Peckham, Wichita Falls, Texas, 6-2-1926.

Checks as follows:

"8" "B" $1,500.00

PLAINTIFF'S EXHIBIT 83.

City National Bank, Deposited by G. W. Peckham, Wichita Falls, Texas, 6-16-1926.

Checks as follows:

"7" $4,500.00

986 PLAINTIFF'S EXHIBIT 84.

City National Bank, Deposited by G. W. Peckham, Wichita Falls, Texas, 7-15-1926.

Checks as follows:

"7" $1,000.00

The Witness:

Mr. Peckham was given credit for these items in the City National Bank.

The bound volume of voucher notations kept by the Wichita Royalty Company shows, 503 to improvement on Marlborough Addition; 507, $1,500.00, Marlborough Addition, to apply on our proportion of improvements; 510 for $4,500.00, to apply on improvements, Marlborough Addition, our proportion; 519 for $1,000.00, to apply on improvements, Marlborough Addition, our proportion.

The books and records of G. W. Peckham, such as I have made investigation of, in the Marlborough Addition, show that this $10,000.00 was so expended by G. W. Peckham for that purpose. I have here two checks that he used, and I have three slips that was in his statement, and I have the books of the Marlborough Addition. The original checks, one of them dated June 19, 1926, payable to the Marlborough Addition for $4,500.00, signed by G. W. Peckham. Paid on the same date. Then I have a check dated July 23, 1926, payable to the Marlborough Addition for $1,000.00, and signed G. W. Peckham, and paid on the same day, that is the $5,500.00. I have here a memorandum dated May 20, 1926, which says, payable to the Marlborough Addition for $2,000.00, G. W. P.

987 and it was dated 5-20-26 and there was a check charged to his account, as shown by the original record of the bank for $2,000.00 on that date, and the credit to the account of the Marlborough Addition on May 20, 1926, as shown by the ledger sheet of the bank for $2,000.00. The Marlborough Addition shows credits of $4,500.00 and $1,000.00 also, which I have testified about. The other memorandum, dated June 7, 1926, it was paid on June 2, 1926, for $1,500.00, payable to the Marlborough Addition and on June 2, 1926, there was a charge to G. W. Peckham's personal account as shown by the original ledger sheet of the City National Bank and a credit on the same day to the account of Marlborough Addition as shown on that very ledger sheet for $1,500.00.

The next one is dated June 7, 1926, for $1,000.00, payable to the Marlborough Addition, paid on 7-7-1926, charged to his account as shown by the original sheet of the City National Bank in the amount of $1,000.00, and credited to the account of Marlborough Addition on 7-7-1926, as shown by the original ledger sheet. The bank account of George Peckham shows a corresponding debit of $10,000.00 in respect to these various items, and the account of the Marlborough Addition shows a corresponding credit of $10,000.00.

Mr. Humphrey:

We offer in evidence these two checks, marked "Plaintiff's Exhibits 85 and 86."

988 PLAINTIFF'S EXHIBIT 85.

Wichita Falls, Texas, 6-19-1926. "7" The City National Bank of Wichita Falls. Pay to the order of Marlborough Addition $4,500.00. Signed G. W. Peckham. No indorsement. Perforated Paid 6-19-1926.

PLAINTIFF'S EXHIBIT 86.

Wichita Falls, Texas, 7-23-1926. "7" The City National Bank of Wichita Falls. Pay to the order of Marlborough Addition $1,000.00. (Signed) G. W. Peckham. This check is in full settlement, etc. (No indorsement.) Perforated Paid 6-19-26.

The Witness:

The records of the Marlborough Addition show, with reference to the payment of this $10,00.00 as follows:

G. W. Peckham's investment account on the ledger of the Marlborough Addition shows a credit on May 20, 1926, for $2,000.00; on June 2, 1926, the same account shows a

credit of $1,500.00; on June 7, 1926, the same account shows a credit of $1,000.00; on June 19, 1926, that account shows a credit of $4,500.00, and on July 23, 1926, it shows a credit of $1,000.00. The aggregate of the credits being $10,000.00. On May 20, 1926, the cash receipt book shows, the Marlborough Addition shows $2,000.00 from G. W. Peckham. The same book shows on June 2, 1926, they received $1,500.00 from G. W. Peckham and shows on June 7, 1926, received $1,000.00 from G. W. Peckham, and on June 19, it shows they received from G. W. Peckham, $4,500.00; and on July 23, 1926,
989* it shows they received from G. W. Peckham, $1,000.00, aggregating in all $10,000.00. It shows the Marlborough Addition received those amounts for the investment account of G. W. Peckham.

The record shows that G. W. Peckham conveyed a half interest in the Marlborough Addition to the Wichita Royalty Company and had deeded this interest to the Wichita Royalty Company by deed which was delivered; and the other half interest was owned jointly by J. A. Kemp and J. T. Harrell. The ledger account of J. T. Harrell, Investment account on the books of the Marlborough Addition showed that he was given credit for $2,000.00 on May 19, 1926; he also received a credit on June 3, 1926, for $3,000.00. The cash receipt books of the Marlborough Addition show that on May 19, 1926, they received $2,000.00 from J. T. Harrell, for the investment account. On June 23, 1926, they received from J. T. Harrell for his investment account, $3,000.00 making a total of $5,000.00 which would be one-half of the amount that the Royalty Company paid. On the books of the Marlborough Addition under the head of "J. A. Kemp investment account," on May 19, 1926, he was given credit for $2,000.00. On May 22, 1926, his investment account was given credit for $3,000.00 and the cash receipt book of the same company, Marlborough Addition, show that on May 19 they received $2,000.00 for the J. A. Kemp investment account and on May 22, 1926, they received $3,000.00 from J. A. Kemp on his investment account,

making a total of $5,000.00. In other words, there
990 was expended for the improvement of Marlborough Addition at this time the total sum of $20,000.00, one-half of which is paid by Harrell and Kemp who owned a half interest in it and the other half of which was paid by the Wichita Royalty Company thru the account of G. W. Peckham, which owned a one-half interest. The records of the Marlborough Addition, Harrell and Kemp, and Peckham's books and the royalty company's books, reflect those transactions.

I have examined the books and records of the Marlborough and support these items by Mr. Harrell's checks. Mr. Kemp is dead, he died in the fall of 1930. Mr. Duncan kept the books of the Marlborough Addition, he is also dead. The entries I am reading from are those of Mr. Duncan. He was a competent accountant and bookkeeper. The books that I have examined are the corporate books of the Marlborough Addition, which were incorporated under the name of Texas Investment Company and taken from the custody of the officers of that company, one of them is Mr. Deaton.

Check No. 506, $500.00, payable to City National Bank, signed by Wichita Royalty Company by E. E. Scannell, dated May 9, 1926, and paid June 2, 1926, the books of the City National Bank show on June 2, 1926, this check was applied to pay the interest on Wichita Royalty Company note No. 74,590, amounting to $25,000.00 and held by the City National Bank, and says, "Interest due unpaid amounting to $500.00." This item in no manner passed
through Mr. Peckham's account. The copy of the
991 voucher of the Wichita Royalty Company shows, "To payment of interest on loan from City National Bank, $25,000.00 for ninety days." This check was handled by cage 19, which was the loan and discount department. The $10,000.00 which I previously testified to, was charged according to my record, for the purpose stated in the voucher of the Wichita Royalty Company. The next check, No. 521, dated July 16, 1926, payable to the City National Bank for $300.00, signed by the Wichita

Royalty Company. The copy of the voucher of the Wichita Royalty Company shows, to interest on money borrowed from City National Bank, Wichita Falls, for ninety days, $300.00. The records of the bank show, on July 17, 1926, this check was applied to pay interest on Wichita Royalty Company note No. 76-878, amounting to $15,000.00 and held by the City National Bank. $15,000.00 principal and $300.00 interest, and this item in no manner passed through Mr. Peckham's account. The check was handled by cage No. 19, which was the loan and discount department and the records of the Wichita Royalty Company so indicate.

The next check, No. 525, for $4,000.00, together with check 532, for $4,350.78, and 556 for $700.00, and 556-a for $538.19, aggregate $9,595.74. I will explain those checks. Check No. 525, notes payable to apply notes due 9-19-26 and Highland Irrigation Company for land in fee, $4,000.00. No. 532 shows notes payable to apply on note due 9-19-26, to Highland Irrigation Company for land in fee, $3,738.50, interest expense on above note, eight
992 percent for one year, $619.08, total $4,357.58. Check No. 556, shows interest expense to apply on two notes of $7,738.50, at the rate of eight percent per annum, with interest applying on period 9-19-25 to 9-19-26, Highland Irrigation Company note, $700.00. 556a interest expense to apply on two notes for $7,738.56 at the rate of eight percent per annum. This interest applying on period 9-19-25, to 9-19-26, Highland Irrigation Company notes. For the balance interest paid see check No. 556. Three of these checks were signed by E. E. Scannell and one of them signed by G. W. Peckham, which is No. 532 for $4,357.58. Those were E. E. Scannell for trustee under the name of Wichita Royalty Company. I find where all of them but one was deposited to Mr. Peckham's account, No. 556, $700.00, dated December 22, 1926, and paid on the same date, I do not find the deposit slip for that check. Here are the three deposit slips I do find, they are the deposit slips for $4,000.00, $4,357.58 and $538.16. Teller No. 7 received the $4,000.00 check and the $4,-

357.58 check and teller No. 8 handled item for $538.16. Those tellers were Mr. Thomason and Mr. Bomar.

Mr. Humphrey:

We offer the three deposit slips in evidence, Plaintiff's Exhibits 87, 88 and 89.

PLAINTIFF'S EXHIBIT 87.

City National Bank Deposited by G. W. Peckham Wichita Falls, Texas, 8-2-1926.

993	Checks as follows:	
	"7"	$4,000.00

PLAINTIFF'S EXHIBIT 88.

City National Bank Deposited by G. W. Peckham Wichita Falls, Texas, 8-27-1926.

Checks as follows:

"7"	R	-4,357.58

PLAINTIFF'S EXHIBIT 89.

City National Bank Deposited by G. W. Peckham Wichita Falls, Texas, 1-3-1927.

Checks as follows:

		400.00
	6024	60.00
"8"		538.16*
Total		$998.16

The Witness:

I do not find where the $700.00 check went to the credit of Mr. Peckham, I am of the opinion that that was cashed. The records of the Wichita Royalty Company, the copies in the bound volume of the vouchers shows that those checks were to pay the notes of the Highland Irrigation Company. These funds were received from the Wichita Royalty Company by G. W. Peckham to meet their maturing liabilities on notes held by the Highland Irrigation Company and were applied on said notes as follows: Payment to the Highland Irrigation Company for the account of G. W. Peckham on October 15, 1926, the sum of $9,595.74. Aggregating the amount of these four checks. I have the original deposit slip of the Highland Irrigation Company dated October 15, 1926, stating G. W. Peckham, for that amount, together with J. A. Kemp and J. T. Harrell, payment for a like amount. Mr. Harrell and Mr. Kemp each paid half as much as Peckham paid. This is the original deposit slip to the Highland Irrigation Company showing the disposition of those four checks.

994

Mr. Humphrey:

We offer the deposit slip in evidence, PLAINTIFF'S EXHIBIT 90.

Deposited with the City National Bank for the credit of Highland Irrigation Company, Wichita Falls, Texas 10-15-1926, Checks:

J. A. Kemp	4,797.87
J. T. Harrell	4,797.87
G. W. Peckham	9,595.74
"9" Total	$19,191.48

The Witness:

There was entered on October 14, 1926, Marlborough Company's books, $7,738.50. Journal entry No. 13 says "Note", and that is from the G. W. Peckham interest account, and the J. A. Kemp investment account on the same date, shows journal entry No. 13, Note $3,869.25; and the J. T. Harrell investment on the same day, with the Marlborough Addition, shows credit on note $3,869.25. Journal entry No. 13, shows J. T. Harrell investment account $3,869.25, J. A. Kemp investment account, $3,869.25, G. W. Peckham account $7,738.50. Says, To recording payment 10-4-26, the notes 1 and 2, Highland Irrigation Company for individual payment by J. T. Harrell and J. A. Kemp and G. W. Peckham. These payments I detailed included the interest as well as the principal, and those were payments made to the Highland Irrigation Company and not to the Marlborough, of course, the records of the Marlborough would show the amount of the principal of the notes paid and not the interest due.

995

I will state to the Court that the records of the Marlborough the records of the Highland Irrigation Company and the deposit slip which has been offered in evidence, and the records of the Wichita Royalty Company and of the bank, show that this total sum of $9,595.75, was applied to the purpose stated in the copies of the voucher, and Mr. Harrell and Mr. Kemp the other joint owners, paid their exact pro rata part.

In addition to their records that I have testified about, showing the payments on said sum, of $9,595.75, the records of George Peckham in the bank, in his individual deposit slips, show that these checks in the exact amount that I detailed here were paid by the bank on the days that they were paid. I have a copy of his individual ledger sheet, which is part of the check up I made. I do not have that individual check, I have a memorandum of it I hand you here a slip dated 10-15-26 for $9,595.74, which was found in Mr. Peckham's statements.

Mr. Humphrey:

I offer in evidence in connection with this item and ask that it be photostated, the ledger sheet of G. W. Peckham, showing that on October 15, 1926, a check in the sum of $9,595.74 was charged against his deposit account.

SIGNATURE

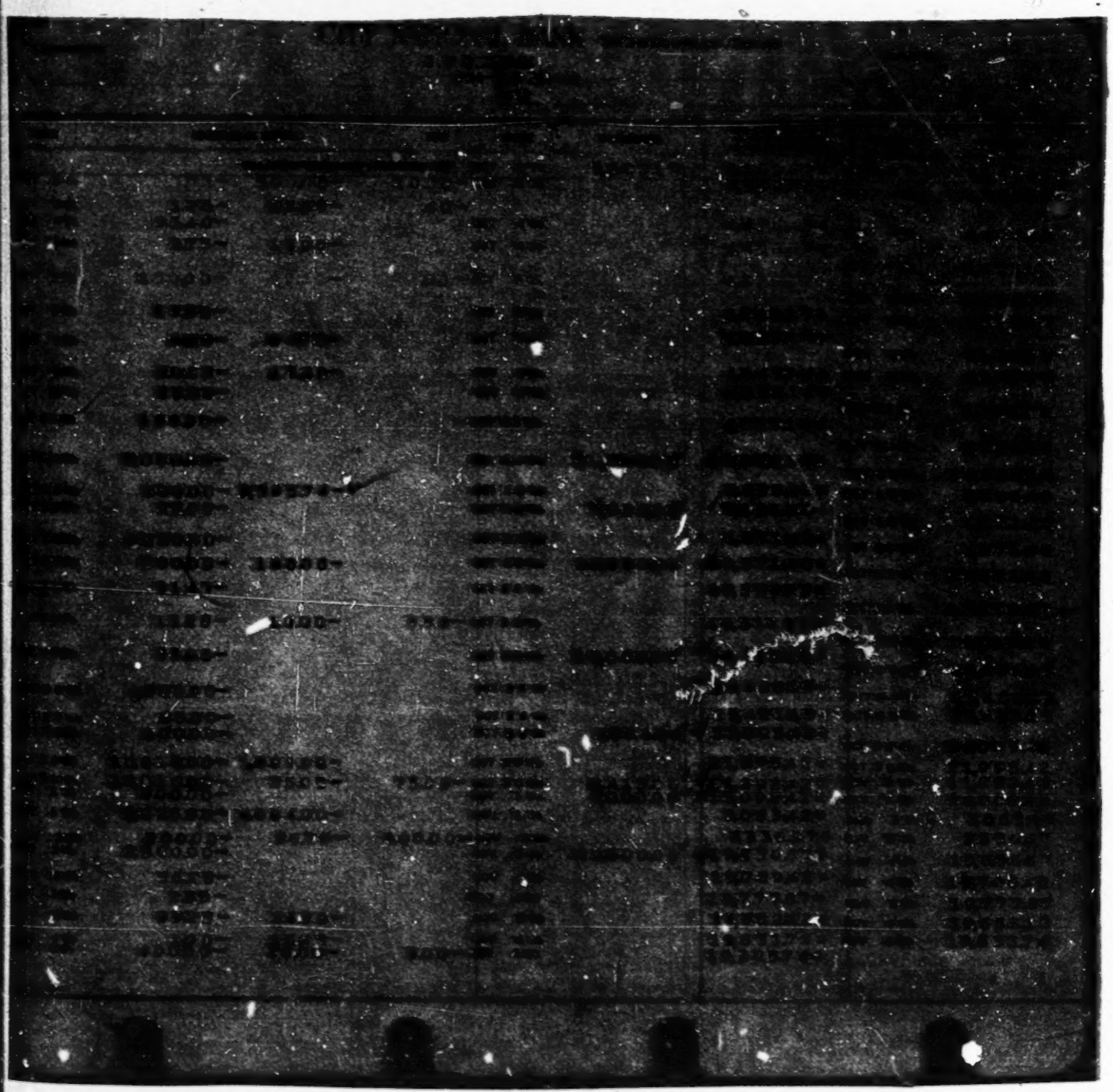
CITY NATIONAL BANK WICHITA FALLS, TEXAS

40

[illegible]

P.E. 91

DATE	CHECKS IN DETAIL			DATE	DEPOSITS	THE LAST AMOUNT IN THIS COLUMN IS YOUR BALANCE	DATE	PROOF
	BALANCE THOUGHT FORWARD SET			AUG 5	4,017.84	4,017.84*	AUG 5	4,017.84*
AUG 6	260.00-			AUG 6		3,757.84*	AUG 6	3,757.84
AUG 6	45.00-	12.60-		AUG 6		3,700.24*	AUG 7	3,700.24
AUG 7	6.12-	9.74-	1.05-					
AUG 7	5.00-			AUG 7		3,678.33*	AUG 7	3,678.33
AUG 7	6.00-	4.00-		AUG 7		3,668.33*	AUG 9	3,668.33
AUG 9	39.40-			AUG 9		3,628.93*	AUG 10	3,628.93
AUG 10	550.00-			AUG 10		3,078.93*	AUG 11	3,078.93
AUG 11	750.00-			AUG 11		2,328.93*	AUG 11	2,328.93
AUG 11	250.00-			AUG 11		2,078.93*	AUG 15	2,078.93
AUG 16	300.00-			AUG 16		1,778.93*	AUG 16	1,778.93
AUG 16	5.00-			AUG 16		1,773.93*	AUG 17	1,773.93
AUG 17	50.00-			AUG 17		1,723.93*	AUG 21	1,723.93
AUG 21	[illegible]					1,682.29*	AUG 21	1,682.29
AUG 21	25.00-			AUG 21		1,657.28*	AUG 23	1,657.28
AUG 23	300.00-			AUG 23		1,357.28*	AUG 24	1,357.28
AUG 24	200.00-	50.00-		AUG 24		1,107.28*	AUG 27	1,107.28
AUG 27			AUG	AUG 27	4,357.58	5,464.86*	AUG 27	5,464.86
AUG 27	1,000.00-			AUG 27		4,464.86*	AUG 30	4,464.86
AUG 30	75.00-	14.50-		AUG 30		4,375.36*	AUG 30	4,375.36
AUG 30	61.65-	8,100.00*		AUG 30		4,313.71*	AUG 31	4,313.71
AUG 31	260.00-	33.58-	33.58-	AUG 31		3,986.55*	AUG 31	3,986.55
AUG 31	8,100.00-			AUG 31	4,250.00	136.55*	SEP 1	136.55
SEP 1	190.00*			SEP 1		136.55*	SEP 1	136.55
SEP 1	190.00*			SEP 1		136.55*	SEP 2	136.55
SEP 2	8.04-			SEP 2		128.51*	SEP 2	128.51
				SEP 2	500.00	628.51*	SEP 3	628.51
SEP 3	190.00-			SEP 3		438.51*	SEP 3	438.51
SEP 3	65.00-					373.51*	SEP 9	373.51
SEP 9	25.00-	200.00-		SEP 9		148.51*	SEP 30	148.51
SEP 30				SEP 30	1,253.00			
SEP 30				SEP 30	4,666.47	6,067.98*	SEP 30	6,067.98
SEP 30	[illegible]	[illegible]	[illegible]	SEP 30		[illegible]		
						5,494.34*		
OCT 1	[illegible]	[illegible]		OCT 1		[illegible]	OCT 1	[illegible]
OCT 1	[illegible]			OCT 1		[illegible]	OCT 1	[illegible]
OCT 2	100.00-	35.25-	25.00-	OCT 2		[illegible]	OCT 2	[illegible]
OCT 2	[illegible]	[illegible]		OCT 2		5,102.20*		



998 The Witness:

I have here a check for $4,797.87, drawn on the City National Bank, dated October 4, 1926, payable to Highland Irrigation Company. This is one-fourth of the total payment that I have testified about. Half of it is Peckham's and this is Mr Harrell's check.

Mr. Humphrey:

We offer the check in evidence.

PLAINTIFF'S EXHIBIT 92.

Wichita Falls, Texas, Oct. 4, 1926, No. .... (Stamped) Oct. 18, 1926, "9" "2" Pay to the order of Highland Irrigation Company $4,797.87 Signed J. T. Harrell. (Stamped on back Pay to the order of City National Bank Wichita Falls, Texas. Highland Irrigation Company. Perforated Paid 10-19-26 In pencil 230843.

The Witness:

I did not ask for Mr. Kemp's check, however, I verified the fact that he paid a like amount as Mr. Harrell, from his books and records.

Check No. 531, dated 8-27-26 is signed by G. W. Peckham, and payable to the bank, the voucher record shows, interest expense, interest eight percent on $25,000.00 held by the City National Bank for three months, $500.00. That voucher bears the same date as the check and the voucher records. Of course, I never saw the original voucher which accompanied the check. The check was paid for the purpose stated in the voucher. On August 30, 1926, this check was applied to payment of in-
999 terest on Wichita Royalty Company note No. 78-450, amounting to $25,000.00 held by the City National Bank. This check in no manner passed through Mr. Peckham's account, it was applied directly on their liability. I am testifying from the liability ledger of the Wichita Royalty Company with the City National Bank

and this liability ledger shows that this check of $500.00 was applied against the liability of the Wichita Royalty Company on its note of $25,000.00. This check was handled by cage 19, which was the loan and discount department, his office or place of business was on the opposite side from the receiving teller of the bank.

The next check, 540, dated 10-13-26, in the sum of $300.00, payable to the City National Bank and signed E. E. Scannell for trustee of the Wichita Royalty Company, the voucher record of the Wichita Royalty Company says, interest on note City National Bank, $300.00. I am testifying from the copy of the voucher records of Wichita Royalty Company, produced by Wichita Royalty Company. The bank records shows, on October 19, 1926, this item was applied to pay the interest on Wichita Royalty Company note No. 80-371, amounting to $15,000.00, and held by the City National Bank, interest due and paid amounting to $300.00. This item in no manner passed through Mr. Peckham's account. I am testifying, as heretofore, from the records of the Wichita Royalty Company and the City National Bank. This check, as well as check
No. 531, were used for the purposes stated in the
1000 voucher record of the Wichita Royalty Company. They were handled by teller No. 19, loan and discount department.

Check No. 550, is for $7,500.00. Check No. 554, is for $1,500.00. The voucher record on check No. 550, says, Royalties owned, Property No. 95, being 3/16th interest in leasehold estate, to eighty acres, east half of lot 10, of North Anderson Ranch lands, Survey No. ...., Archer County, Texas, $5,000.00; Royalties owned, property No. 96, to apply on purchase of one-fourth of royalty on the southwest sixty acres of the E. Polk land, abstract 717, of William Polk preemption Survey, Archer County, Texas; also one-fourth of the seven-eighths leasehold estate of the west forty acres of the same land, $2,500.00, total $7,500.00. The voucher on check No. 554 says, "Notes payable land in fee, to apply on balance due on M. L. Porter one thousand, seventy acres, purchase, $920.82,

interest expense on the above note, $226.00. Royalties owned, property No. 93, being one-half of the royalty on the south half of the northeast quarter of section 35, township 19, north range twenty-one West, Ellis County, Oklahoma. Also seven-eighths oil and gas lease on the same land, one hundred and sixty dollars. Royalties owned, property No. 96, to apply on purchase of one-fourth of royalty on the southwest eighty acres of E. Polk Land, Abstract 717 of William Polk preemption Survey, Archer County, Texas. Also one-fourth of seven-eighths leasehold estate on the west forty acres of the same land, $198.18, total $1,500.00." Voucher
1001 No. 583, royalties owned, No. 96, charge payment on purchase of one-fourth of royalty on the southwest sixty acres of the E. Polk land, abstract 717, of the William Polk preemption survey Archer County, Texas. Also one-fourth of the seven-eighths leasehold estate of the west forty acres of the same land. This payment, together with payments on checks Nos. 550 and 554, making a total cost of $3,000.00 for the above interest, $301.82.

I have considered the foregoing three items together, because they tie together on vouchers of the Wichita Royalty Company. Those three checks were deposited in the bank and credited to G. W. Peckham. I have the deposit slips on those items. The initials are not on them, but Mr. Bomar was in Cage 8.

Mr. Humphrey:
We offer in evidence the deposit slip.

PLAINTIFF'S EXHIBIT 93.

City National Bank Deposited by G. W. Peckham, Wichita Falls, Texas, 11-20-1926, Checks as follows: Wichita Royalty Co. 7,500.00 "8".

The Witness:
The next deposit slip is dated 12-2-26 for $1,900.00, one item is for $1,500.00. That is Cage No. 10, I do not know the name.

Mr. Humphrey:
We offer the deposit slip in evidence, Plaintiff's Exhibit 94.

1002 PLAINTIFF'S EXHIBIT 94.

City National Bank Deposited by G. W. Peckham, Wichita Falls, Texas, 12-2-1926.

Checks as follows:

		400.00
		1500.00
"10"	Total	1900.00

The Witness:
You next show me deposit for an item of $301.82, together with other deposits. George Peckham made out that deposit slip himself, in his own handwriting. It was handled by Teller No. 7, Mr. Thomason.

Mr. Humphrey:
We offer the deposit slip in evidence.

PLAINTIFF'S EXHIBIT 95.

City National Bank, Deposited by G. W. Peckham, Wichita Falls, Texas, 3-16-1927.

Checks as follows:

	301.82
	375.00
"7"	7.00
Total	$883.82

The Witness:

These checks were credited to the individual account of G. W. Peckham and charged against the individual account of Wichita Royalty Company. I have corresponding payments made by G. W. Peckham against the transfer of funds, as follows:

1003 On December 2, 1926, G. W. Peckham paid to W. T. Knight the principal and interest due on December 1, 1926, on the note held against the Wichita Royalty Company or G. W. Peckham property No. 83. Principal $920.83, interest $220.98, or a total of $1141.82. That check is signed by G. W. Peckham and says "$920.84 principal, $220.98 interest, Porter Ranch." Check indorsed by W. T. Knight.

The statement you hand me in connection with the Porter Ranch shows ratable payment against each of the owners, the statement is signed by W. T. Knight, December 8, 1926. It is a receipt of the payment of the joint owners, including G. W. Peckham for the Royalty Company, $1,141.82.

Mr. Humphrey:

We offer Mr. Peckham's check in evidence.

PLAINTIFF'S EXHIBIT 96.

Wichita Falls, Texas, 12-2-1926 No. .... City National Bank of Wichita Falls PK-25 (in green pencil) "6" Pay to the order of W. T. Knight, $1141.82. This check is in full settlement as shown hereon. Acceptance by indorsement constitutes receipt in full. (Signed) G. W. Peckham Indorsed W. T. Knight. Perforated Paid 12-2-26.

PLAINTIFF'S EXHIBIT 97.

Statement of Payment of Note No. 1, Favor M. L. Porter & Wife, Dated Dec. 1st, 1925, due Dec. 1st, 1926

with interest from date. Also annual interest on notes Nos. 2 and 3, due 2 and 3 years from date at 8% per annum.

Note No. 1, Due Dec. 1, 1926, held by Bernard Martin, Wichita Falls, ..	$7,366.67	
Interest Dec. 1, 1925 to Dec. 1, 1926- 8%	589.33	$7,956.00
Annual Interest on Note No. 2, due Dec. 1, 1927, held by Ben G. O'-Neal, Wichita Falls		589.33
Annual Interest on Note No. 3 due Dec. 1928, held by Powers Banking Company, Archer City, Texas		589.33
		$9,134.66

Distribution:

W. T. Knight—2/8	$2,283.70	
Harry Hines—2/8	2,283.68	
J. T. Harrell—1/8	1,141.82	
C. E. Basham—1/8	1,141.82	
Wiley Robertson—1/8	1,141.82	
Geo. Peckham—1/8	1,141.82	$9,134.66

Note:

Note No. 1, including interest from date, was paid to Bernard Martin by W. T. Knight, Dec. 2, 1926, at which time the note was marked "Paid" and surrendered and release executed, which was promptly mailed the County Clerk of Archer County for record.

Annual interest on Note No. 2, in the sum of $589.33 was paid Dec. 2, 1926, by W. T. Knight to Ben. G. O'Neal, who issued Receipt and copy of same attached hereto.

Annual interest on Note No. 3, in the sum of $589.33 was paid Dec. 2, 1926 by W. T. Knight to Powers State Bank,

Archer City, for which Receipt was issued and copy of same is attached hereto.

1005 Having been reimbursed in full for their proportion of the above Note No. 1 in the sum of $7,366.67 and interest on same in the sum of $589.33 making a total of $7,966.00; also, the annual interest on Notes Nos. 2 and 3 in the sum of $589.33 each, I hereby acknowledge receipt of payments as follows:

Harry Hines	$2,283.68	
J. T. Harrell	1,141.82	
C. E. Basham	1,141.82	
Wiley Robertson	1,141.82	
Geo. Peckham	1,141.92	$6,850.96

Signed: Dec. 8, 1926 (Signature) W. T. KNIGHT.

Copy.

December 2nd, 1926.

Received this 2nd day of December, 1926, of W. T. Knight check for $589.33 in payment of the annual interest due December 1st, 1926, on note No. 2 of series of three notes made by W. T. Knight, Harry Hines, J. T. Harrell, W. L. Robertson, C. E. Basham and George W. Peckham, payable to M. L. Porter and wife S. J. Porter, which note was given as part payment for 1070 acres of land out of the J. Poitevent survey, Abstract 348, situated in Archer County, Texas.

(Signed) BEN G. O'NEAL.

1006 Copy.

December 6, 1926.

Mr. W. T. Knight, Wichita Falls, Texas.
Dear Sir:

This will acknowledge receipt of your letter of Dec. 3rd. inclosing check for $589.33 being one years interest on

$7366.67 favor M. L. Porter and wife, which amount we have credited to the account of T. B. Wilson as it is our understanding these notes are the property of Mr. Wilson.

Yours very truly,
JNO P. FLEMING,
Cashier.

The Witness:
I have a check dated November 1, 1926, payable to the order of A. A. Peard, in the amount of $160.00, signed G. W. Peckham. Indorsed A. A. Peard, and also Citizens State Bank, Vici, Oklahoma. First National Bank, Woodward, Oklahoma. First National Bank, Fort Worth, Texas. It shows to have been cleared and paid. That is Wichita Royalty Company Property No. 93.

Mr. Humphrey:
I offer the check in evidence, Plaintiff's Exhibit 98.

PLAINTIFF'S EXHIBIT 98.

Wichita Falls, Texas, 11-1-1926 No. .... K-24 The City National Bank of Wichita Falls, Pay to the order of A. A. Peard, $160.00 (Stamped) 606 This check is in full settlement as shown hereon. Acceptance bb indorsement constitutes receipt in full. (Signed) G. W. Peckham Indorsed A. A. Peard (Perforated) Paid 11-9-26 Indorsed Pay Any Bank Or Banker. Previous Indorsements Guaranteed Nov. 3, 1926 Citizens State Bank, Vici, Oklahoma. First National Bank Woodward, Okla. Indorsements Guaranteed. Security National Bank Clearing House Paid Nov. 9, 1926, First National Bank Fort Worth Texas, 37-1 R. C. Martin, Cashier. Prior Indorsements Guaranteed.

1007

The Witness:
The assignment of an oil and gas lease which you now hand me, dated October 8, 1926, signed by G. W. Peck-

ham, transferred to the Wichita Royalty Company, corresponds with the copy of the voucher record as to the consideration for this $160.00 check. The deed has been properly executed and recorded.

Mr. Humphrey:

We offer the deed in evidence, PLAINTIFF'S EXHIBIT 99.

Assignment Of Oil And Gas Lease.

From George W. Peckham to Wichita Royalty Company. Consideration $1.00, and other good and valuable considerations.

Dated October 8, 1926.

Conveying the south half of the northeast quarter of the east one-half and the southeast quarter of the southeast quarter section 35, township 19, Range 21 west, containing 80 acres.

Filed for record November 26, 1926 at 9:00 o'clock A. M. and recorded in book 17, page 382 of the records of Ellis County, Oklahoma.

The Witness:

I was not able to find the check from George Peckham's files where he paid the remainder of this item, I have not been able to secure the records of the
1008 Security National Bank.

I do not know F. O. Harrell personally, he is an oil operator and broker. The record indicates that he had some dealings with George Peckham. The instrument you now hand me is a royalty deed from E. Polk and wife to F. O. Harrell dated October 9, 1926, conveying to F. O. Harrell and Walter Allen a one-half interest in and to all of the oil and gas and other minerals under

the southwest sixty acres of the E. Polk land, Abstract 717 in Archer County, Texas, which deed corresponds with the voucher record as to the royalty purchase. I have no transfer out of Harrell to Peckham or to the royalty company and do not know whether any was executed or not, or whether Mr. Harrell held that for the royalty company, except what the voucher and records show. Property No. 95, represents three-sixteenths interest in the leasehold of the east half of lot 10, North Anderson Ranch. The same situation prevails with reference to this property as to the one above. F. O. Harrell, on February 1, 1927, acquired an interest in this identical property from the Sun Company and there is not any conveyance from Harrell to Peckham or the royalty company that I could find.

Check No. 557, payable to the City National Bank for $1,920, signed by E. E. Scannell for the Wichita Royalty Company, dated December 7, 1926, the voucher record of the royalty company shows, royalty owned in full payment of one-half of royalty in six hundred and forty acres in Hartley County, Texas. There was a deed executed to the royalty company by Peckham for this item. This property was acquired from Joseph M. Perkins of Eastland, Texas. This royalty was conveyed to
1009 G. W. Peckham by an instrument signed by the grantee, Perkins, August 7, 1926, acknowledged September 29, 1926. G. W. Peckham conveyed the identical interest to the Wichita Royalty Company by instrument dated August 7, 1926, acknowledged December 15, 1926. Consideration was paid by the Wichita Royalty Company, check No. 557, issued December 7, 1926, payable to the City National Bank. On December 15, 1926, this check was applied to pay a draft drawn for the consideration and coming through the Texas State Bank of Eastland, Texas, the deed attached, and in the sum of $1,920.00. This item did not go through Mr. Peckham's bank account, it was handled by the collection department. That $1,920.00 check was applied to the exact purpose stated in the voucher records of the Wichita Roy-

alty Company; I am referring to Plaintiff's Exhibit 41, deed from Peckham to Wichita Royalty Company, plaintiff's Exhibit 40, check of $1,920.00, signed by Wichita Royalty Company on the City National Bank and the receipt, or remittance receipt of the City National Bank, Plaintiff's Exhibit 39.

The next check is No. 569, dated 1-11-27, for $300.00, signed by Wichita Royalty Company by E. E. Scannell, I have the voucher record on that check of the Wichita Royalty Company, it shows a payment on interest on loan at City National Bank, $300.00. The records of the City National Bank shows that their liability account was credited with $300.00 on January 15, and this item in no manner passed through Peckham's account. It was handled by the teller in Cage 19, Loan and dis-
1010 count teller. With reference to this matter, I am testifying from the records of the bank, the liability ledger of the Wichita Royalty Company with the City National Bank, as well as other items.

I now have two checks, one dated January 19, 1927, No. 571, payable to the City National Bank, $2,000.00, signed by Wichita Royalty Company by E. E. Scannell for trustee; and the other check dated February 19, 1927, No. 579, for $2,500.00, payable to the order of the bank, and likewise signed by E. E. Scannell, trustee for the Wichita Royalty Company, both checks drawn on the City National Bank. I have the deposit slips for those two checks, one of the deposit slips, the original, is in the handwriting of G. W. Peckham, $2,500.00; the other original deposit slip was made by the teller No. 7, Mr. Thomason. Those checks were charged to the deposit account of the Wichita Royalty Company and credited to the deposit account of G. W. Peckham.

Mr. Humphrey:

We offer the deposit slips in evidence.

PLAINTIFF'S EXHIBIT 100.

City National Bank Deposited by G. W. Peckham, Wichita Falls, Texas, 2-19-1927.

Checks as follows:

		2500.00
7275		1500.00
"7"	Total	4000.00

1011 PLAINTIFF'S EXHIBIT 101.

City National Bank Deposited by G. W. Peckham, Wichita Falls, Texas, 1-19-1927.

Checks as follows:

"7"	"RT"	2,000.00.

The Witness:

The voucher record on check No. 571 says, "Land improvement to apply on paving excess, Marlborough Addition." Voucher record on check No. 579, Land in fee to apply on paving strip of Marlborough Addition. The first one says in pencil, "Deposited to Peckham's account never returned." I do not know who put that there. I have not been able to find account of G. W. Peckham, either in the City National Bank or the Security National Bank, as to what became of that money; I am unable to find where Peckham applied same to the payment to the Marlborough Addition, the alleged purpose of the check. I am unable to determine whether Peckham was aware of their purpose, since I do not have the statements from the Security National Bank, and I am unable to tell from their records how he used the money, the records of the Security National Bank having been destroyed by the receiver.

Check No. 582, dated March 1, 1927, payable to the City National Bank for $500.00, signed Wichita Royalty Company by E. E. Scannell trustee, the voucher notation on that check shows, interest on note held by City National Bank. This was deposited to the account of G. W. Peckham on March 8, 1927. I have the deposit slip, it was taken by Mr. Thomason, Teller No. 7.

1012 Mr. Humphrey:

We offer the deposit slip in evidence, Plaintiff's Exhibit 102.

PLAINTIFF'S EXHIBIT 102.

City National Bank Deposited by G. W. Peckham, Wichita Falls, Texas, 3-8-1927.

Checks as follows:

"7"	Wich. Royalty	500.00
"RT"		

The Witness:

That check was charged to the deposit account of Wichita Royalty Company and credited to the deposit account of G. W. Peckham. I found on December 8, 1926, G. W. Peckham, from his personal account, paid the City National Bank interest due on Wichita Royalty Company note No. 81,992, for $25,000.00, said interest due and paid, amounted to $500.00, and I have Mr. Peckham's individual check for that amount.

Mr. Humphrey:

We offer the check in evidence.

DEFENDANT'S EXHIBIT 103.

88-130 11 Wichita Falls, Texas, 12-8-1926. The City National Bank of Wichita Falls "19" Pay to the order of City National Bank $500.00 K-27. This check is in full settlement as shown hereon. Acceptance by indorsement constitutes receipt in full. Signed G. W. Peckham No indorsement. Perforated paid 12-8-26.

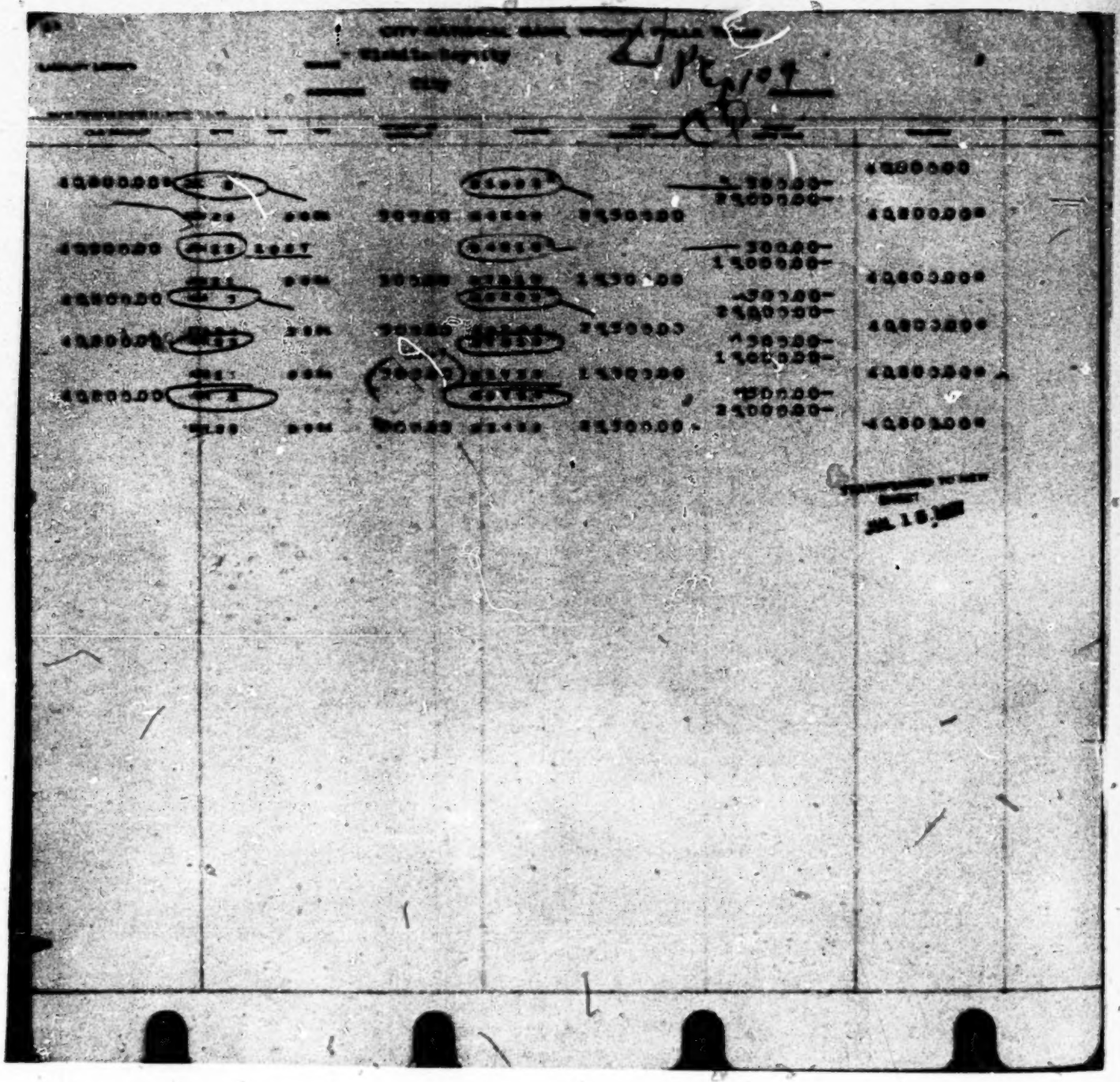
1013 The Witness:

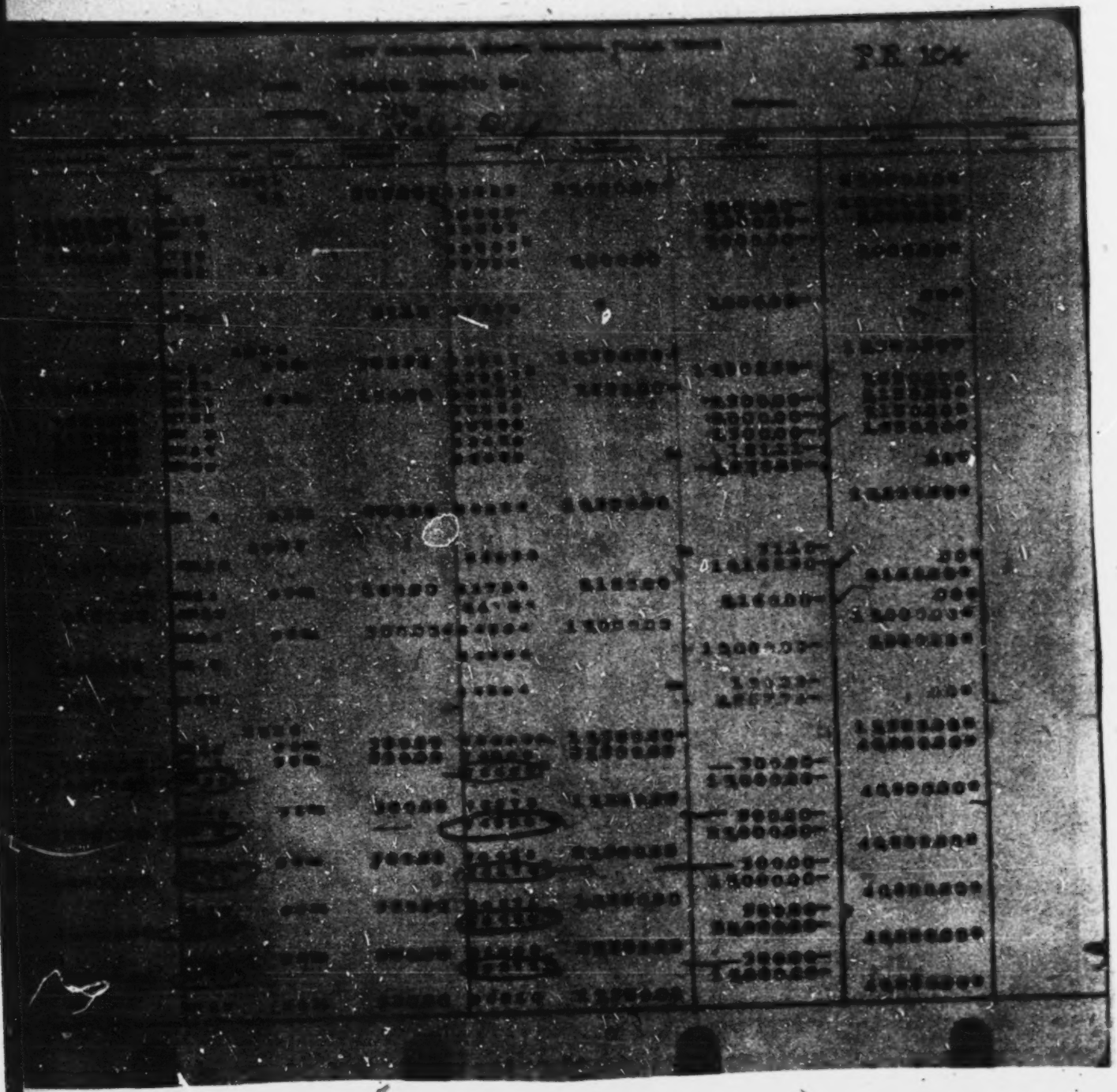
The liability record of the City National Bank, Wichita Royalty Company, shows this payment on December 8.

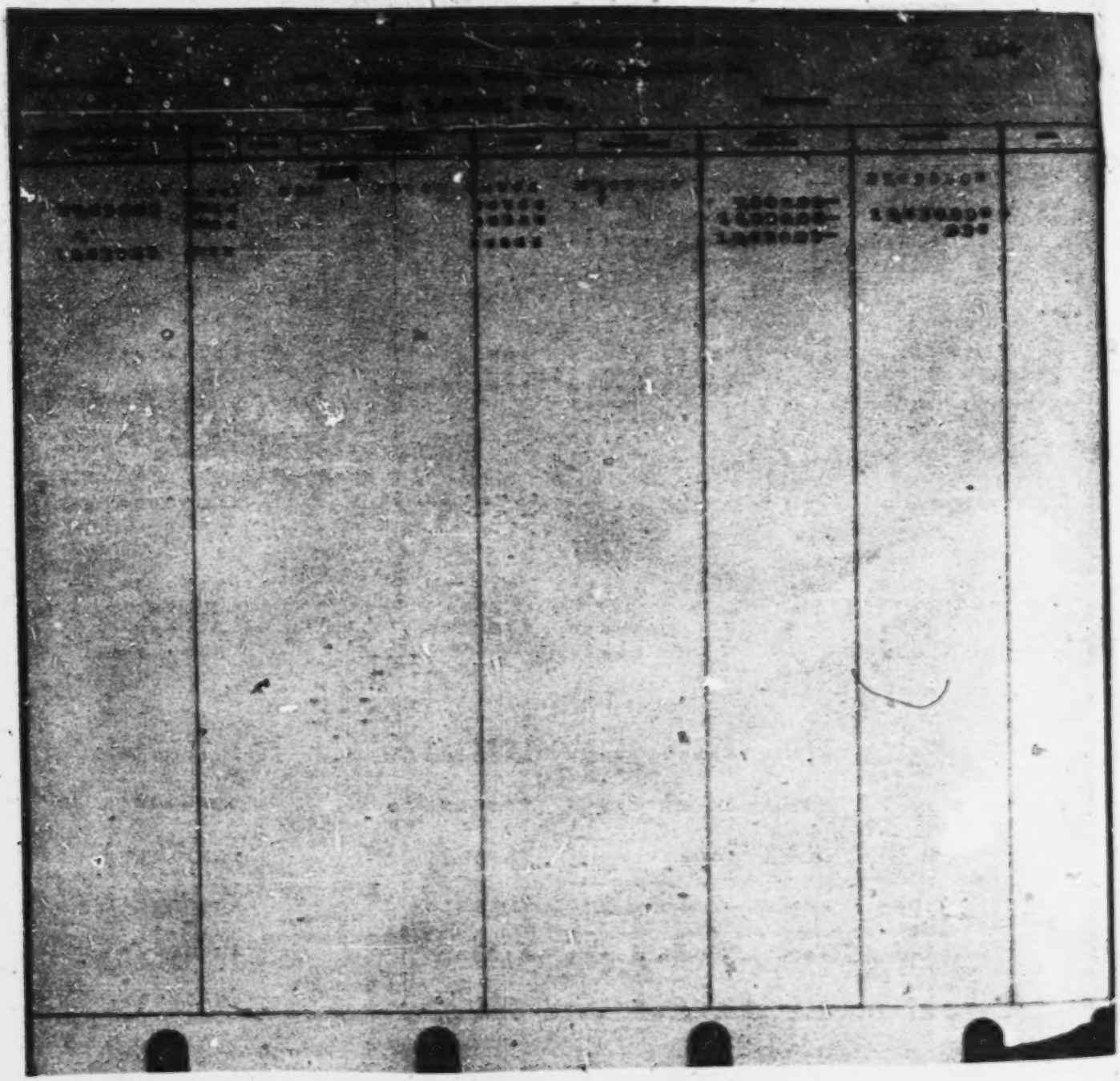
Mr. Humphrey:

We offer the liability record of the bank on that date, and ask that it be photostated.

PLAINTIFF'S EXHIBIT 104.




P.E. 104



1017 The Witness:

The proceeds of that check was applied to the exact purpose as stated in the voucher record.

I have check No. 584, signed by the Wichita Royalty Company by E. E. Scannell, payable to the City National Bank for $500.00; I have the duplicate record of the voucher showing that the Wichita Royalty Company said the purpose of that check was at the time, interest expense, interest on $25,000.00 note for three months, held by City National Bank, $500.00. On March 3, 1927, G. W. Peckham applied this check to pay the interest on Wichita Royalty Company note No. 86,209 for $25,000.00, said interest due and paid amounting to $500.00. This item did not pass through Mr. Peckham's account, but was credited to pay interest on the note of Wichita Royalty Company and the liability ledger of the Wichita Royalty Company with the City National Bank shows that payment. That check was handled by teller No. 19, in the loan and discount department.

Mr. Humphrey:

We offer the check in evidence.

PLAINTIFF'S EXHIBIT 105.

(in pencil) Int Note 86209 Wichita Royalty Company "19" Wichita Falls, Texas, No. 584 (31) circled. March 1, 1927. When properly indorsed pay to the order of City National Bank, $500.00. To City National Bank, Wichita Falls, Texas. Wichita Royalty Company by E. E. Scannell, for trustee. Perforated paid 3-3-27.

1018 The Witness:

The liability ledger which shows payment of this $500.00 check and the credit to interest due on Wichita Royalty Company note, is shown by Plaintiff's Exhibit 104.

The next check, Wichita Royalty Company, check No. 591, dated 3-23-27, for $2,000.00, I am unable to find. I do find that was deposited to the account of George Peckham on March 23, 1927, and I have the deposit slip.

Mr. Humphrey:
We offer it in evidence.

PLAINTIFF'S EXHIBIT 106.

City National Bank Deposited by G. W. Peckham, Wichita Falls, Texas, 3-23-27.

Checks as follows:

	2,000.00
"7"	37.02
Total	$2,037.02

The Witness:
Teller No. 7 took that deposit, I am sure it was Mr. Thomason. That check was charged to the account of Wichita Royalty Company and credited to Mr. Peckham's individual account. The voucher record shows, in carbon copy, royalties owned, purchase royalties, etc., that is all it shows. There is a pencil notation, journal entry No. 26, 5-1-28, should have been charged to notes payable, City National Bank. The date of the check is March 23, 1927. The pencil memorandum says "See journal entry No. 26 5-1-28." Should have been charged to notes payable City National Bank. 5-1-28 is about a year and a month or a little over, longer than the date of the check.

Mr. Humphrey:
We offer in evidence the voucher record and ask that it be photostated.

1019 PLAINTIFF'S EXHIBIT 107.

(See JE No. 26 5/1/28) (Should have been charged to Notes payable-City National Bank) Royalties Owned Purchase royalty as follows: 2,000.00, March 23, 1927. 591 City National Bank 2,000.00, (Dep. to Cr. of G. W. P.) (End G. W. Peckham Paid 3/23/27).

1020 The witness:

That is the journal that is missing. I do not know whose handwriting that is in. I am unable to determine what became of the money, except that it was deposited to Mr. Peckham's account. I have not traced it, because I do not have all of his bank statements from other banks. Mr. Peckham's account was very active, he deposited lots of money and withdrew lots of money.

I have here two checks, No. 615, 1927, for $500.00, and No. 599, dated April 14, 1927, for $300.00. The voucher record of the Wichita Royalty Company shows that check No. 599, later on there has been a pencil notation "A" on there, also on the copy of the voucher. It says, "Interest account, interest on note given for money borrowed from City National Bank, $300.00; and the voucher record on check No. 615 says, "Interest expense, interest on note held by City National Bank, $500.00." Check No. 599-a for $300.00 was paid to the City National Bank on April 23, 1927, and their liability account with the City National Bank was given credit for that amount on the same day. Check No. 615 was paid on June 8, 1927, for $500.00, and their liability account was given credit for that on that same day. So the items in no manner passed through Mr. Peckham's account. They were handled by cage 19, loan and discount cage, and applied to pay interest on notes of Wichita Royalty Company. That is shown by the liability record of the Wichita Royalty Company.

1021 I have here a group of checks, No. 620, dated June 18, 1927 for $1,200.00, signed Wichita Royalty Company by E. E. Scannell; check No. 635, dated August 16, 1927, for $1,500.00, signed by the Wichita

Royalty Company by G. W. Peckham; check No. 650, dated October 14, 1927, for $2,409.00, signed by Wichita Royalty Company by E. E. Scannell; check No. 657 for $1,800.00, dated November 25, 1927, signed Wichita Royalty Company by E. E. Scannell, check No. 710 for $1,850.00, signed Wichita Royalty Company by E. E. Scannell. Check No. 752, dated September 27, 1928 for $424.66, signed Wichita Royalty Company by E. E. Scannell—I am familiar with that group of checks, totaling $9,174.00. I have the deposit slip showing the disposition of each check. They were deposited to the personal account of G. W. Peckham. Teller No. 7 took the deposit, that was Mr. Thomason. I have all of the original deposits except one. Deposit slip payable to G. W. Peckham for $1,200.00, 6-18-27, represents the first check, 620. Mr. Peckham wrote the deposit slip.

Mr. Humphrey:
Offer the deposit slip in evidence.

PLAINTIFF'S EXHIBIT 108.

City National Bank Deposited by G. W. Peckham, Wichita Falls, Texas, 6-18-1927.

Checks as follows:

		1,200.00
"7"	Total	$1,200.00.

The Witness:
The next check, 635, dated August 16, 1927 for $1,500.00, the deposit slip was writen by Mr. Peckham.

Mr. Humphrey:
Offer the deposit slip in evidence.

1022 PLAINTIFF'S EXHIBIT 109.

City National Bank Deposited by G. W. Peckham, Wichita Falls, Texas, 8-16-1927.

Checks as follows:

		1,500.00
"7"	Total	$1,500.00.

The Witness:
The next check, 650, for $2,400.00, I have a deposit slip for it, written by the teller.

Mr. Humphrey:
We offer the deposit slip in evidence, "Plaintiff's Exhibit 110."

PLAINTIFF'S EXHIBIT 110.

City National Bank Deposited by G. W. Peckham, Wichita Falls, Texas, 10-15-27.

Checks as follows:

"7"	Us	$2,400.00
Thomason.		

The Witness:
Deposit slip for $1,800.00, is in the handwriting of George Peckham.

Mr. Humphrey:
We offer the deposit slip in evidence.

PLAINTIFF'S EXHIBIT 111.

City National Bank Deposited by G. W. Peckham, Wichita Falls, Texas, 11-25-1927.

Checks as follows:

		$1,800.00
"7"	Total	$1,800.00

Mr. Humphrey:
Next offer in evidence Plaintiff's Exhibit 112.

1023 PLAINTIFF'S EXHIBIT 112.

City National Bank Deposited by G. W. Peckham, Wichita Falls, Texas, 4-23-1928.

Checks as follows:

"7"	US Thomas—	$1,850.00

The Witness:
This deposit slip for $424.66 represents check No. 752.

Mr. Humphrey:
I offer the deposit slip in evidence.

PLAINTIFF'S EXHIBIT 113.

City National Bank Deposited by G. W. Peckham, Wichita Falls, Texas, 9-27-1928.

Checks as follows:

WRCo	424.66.

The Witness:

Check No. 620 says, notes payable to apply on note for mony borrowed from City National Bank, $1,200.00; check No. 635 says, notes payable to apply on notes held by City National Bank, $1,500.00; Check No. 650, notes payable to apply on money borrowed from City National Bank, $2,400.00. Check No. 657, interest expense to interest on notes held by City National Bank, $1,800.00; Check No. 710, this is in the original typing, notes payable to apply on indebtedness of City National Bank, interest and principal $1,850.00.

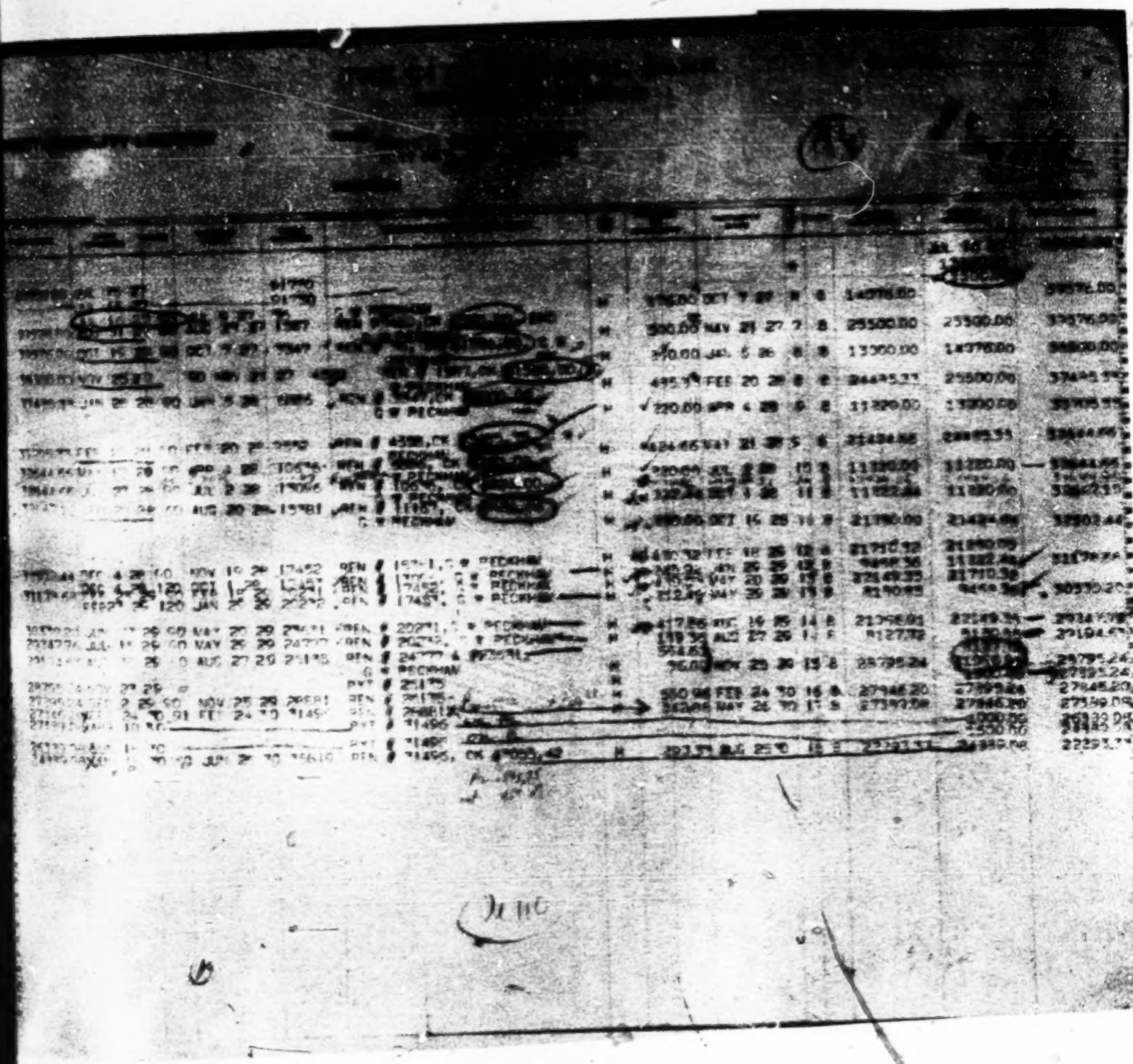
The voucher memorandum I have read is in carbon.

Check No. 752, shows interest expense on notes
1024 held by City National Bank, $424.00. None of those checks were applied by the bank, to notes payable, the identical checks themselves, they were all deposited to the credit of G. W. Peckham. From the account of G. W. Peckham, I can see what he did with this money. The total amount is $9,174.66. On August 31, 1927, Mr. Peckham paid on a note, No. 93,429, $500.00 for interest, out of his personal account. On October 19, 1927, he paid out of his personal account on a note No. 3,-347 $1,336.00. That was on notes in the amount of $13,-800.00, on the Wichita Royalty Company. Both of these notes were payments—both of these payments were on notes of the Wichita Royalty Company. The date of the next payment is October 19, 1927, $1,336.00. $1,060.00 applied on principal and $276.00 on interest. The next payment on November 25, 1927, applied on notes No. 4,-558 for $25,000.00 of the Wichita Royalty for $1,500.00. $1,000.00 was principal and $500.00 was interest. It was paid out of the personal account of G. W. Peckham. On February 15, 1928, G. W. Peckham's personal check for $3,485.33 and that was applied on Note No. 7552 for $24,-000.00 of the Wichita Royalty Company, $3,000.00 was on principal and $485.33 was interest. On September 27, 1928, Mr. Peckham paid from his personal account on Note No. 15,381, for $21,000.00 for the Wichita Royalty Company, $424.66, which was credited on interest. These

payments were made by Peckham individually on notes of the Wichita Royalty Company owing the City National Bank. I am testifying from the liability ledger and Mr. Peckham's check, which show those payments. That is the liability ledger of the Wichita Royalty Company with the bank.

Mr. Humphrey:

We offer in evidence the liability ledger, PLAINTIFF'S EXHIBIT 114.



1027 The Witness:

This sheet covers all of these payments. The individual payments that I have detailed of Mr. Peckham's aggregate $7,245.99. The difference between the individual payments made by Peckham on the note of the Wichita Royalty Company and the amount of the checks which I have exhibited to you, of the Wichita Royalty Company, which was transferred to Mr. Peckham's personal account is $1,929.67. On some of these there is a difference between the voucher of the Wichita Royalty Company with reference to some of these notes, one apparent difference is check No. 710 for $1,850.00, the copy of the voucher was in the original typing instead of in carbon.

Mr. Humphrey:

I offer the following checks, which have been identified by Mr. Carson, drawn on the individual account of G. W. Peckham and paid and credited on the notes of the Wichita Royalty Company owing to the City National Bank, as follows:

PLAINTIFF'S EXHIBIT 115.

Wichita Falls, Texas Aug. 31, 1927, No. .... "19" The City National Bank of Wichita Falls. Pay to the order of Int. $500.00 (Signed) G. W. Peckham Perforated Paid 8-31027.

PLAINTIFF'S EXHIBIT 116.

Wichita Falls, Texas 10-19-27 No. .... "19" The City National Bank of Wichita Falls. Pay to the order of On Note 1076.00 Int. 260.00 $1336.00 Perforated Paid 10-19-27 Signed G. W. Peckham.

1028 The Witness:

The payment of that check does not correspond with the amount of the check, the principal of the note was credited with $1060.00 and interest $276.00.

Mr. Humphrey:

We offer in evidence Plaintiff's Exhibit 117.

PLAINTIFF'S EXHIBIT 117.

Wichita Falls, Texas, Nov. 25, 1927, No. .... "19" The City National Bank of Wichita Falls Pay to the order of City National Bank $1500.00 Perforated Paid 11-25-27 Signed G. W. Peckham.

Mr. Humphrey:

We next offer in evidence check dated 2-15-28.

PLAINTIFF'S EXHIBIT 118.

Wichita Falls, Texas, 2-15-1928 No. .... "19" The City National Bank of Wichita Falls. Pay to the order of City National Bank $3485.33 (Perforated Paid 2-15-28. Signed G. W. Peckham (P) K-63.

The Witness:

The next check is dated 9-27-28, for $424.66, signed by G. W. Peckham.

Mr. Humphrey:

We offer it in evidence.

PLAINTIFF'S EXHIBIT 119.

Wichita Falls, Texas, 9-27-28. The City National Bank of Wichita Falls. Pay to the order of City National Bank $424.66. This check is in full settlement, etc. (Signed) G. W. Peckham Perforated Paid 9-27-28.

The Witness:

There was a difference of $1,929.67, which I was unable to trace.

Mr. Rogers:

We offer all of those checks in evidence, marked "Defendant's Exhibits 117, 118, 119, 120, 121, and 122," as follows:

DEFENDANT'S EXHIBIT 117.

Wichita Royalty Company, Wichita Falls, Texas June 18, 1927 No. 620 (34) in circle (Green pencil) Dep to cr of GWP 6-18-27 When properly indorsed pay to the order of City National Bank "7" $1200.00. To the City National Bank, Wichita Falls, Texas. Wichita Royalty Company, by E. E. Scannell for trustee. Perforated Paid 6-18-27.

DEFENDANT'S EXHIBIT 118.

Wichita Royalty Company, Wichita Falls, Texas, August 16, 1927 No. 635. (Green pencil) Dep to cr of GWP 8-16-27 "7" When properly indorsed pay to the order of City National Bank To the City National Bank, $1,500.00 Wichita Falls, Texas. Wichita Royalty Company, by G. W. Peckham, trustee. Perforated Paid 8-16-27.

DEFENDANT'S EXHIBIT 119.

Wichita Royalty Company, Wichita Falls, Texas. No. 650 October 14, 1927 (Green pencil) Dep to cr of GWP 10-15-27 "7" When properly indorsed pay to the order of City National Bank $2,400.00 To the City National Bank
Wichita Falls, Texas. Wichita Royalty Com-
1030 pany by E. E. Scannell for trustee. (Perforated) Paid 10-15-27.

DEFENDANT'S EXHIBIT 120.

Wichita Royalty Company, Wichita Falls, Texas. No. 657 (Green pencil) Dep to cr of GWP 11-25-27 November 25, 1927 "7" When properly indorsed * * * to order of City National Bank $1800.00 To the City National Bank, Wichita Falls, Texas (37) in circle Wichita Royalty Company, by E. E. Scannell for trustee. (Perforated) Paid 11-25-27.

DEFENDANT'S EXHIBIT 121.

Wichita Royalty Company, Wichita Falls, Texas No. 710 (38) circled (Green pencil) Dept to cr GWP on 4-23-28 April 20, 1928 When properly indorsed * * * order of City National Bank $1850.00 To the City National Bank Wichita Falls, Texas. Wichita Royalty Company by E. E. Scannell for trustee. (Perforated Paid 4-23-28.

DEFENDANT'S EXHIBIT 122.

Wichita Royalty Company, Wichita Falls, Texas No. 752 (31) circled (Red Pencil) Dep to cr of GWP 9-27-28 $424.66. When properly indorsed pay to the order of City National Bank To the City National Bank, Wichita Falls, Texas: Wichita Royalty Company by E. E. Scannell for trustee. (Perforated) Paid 9-27-28 Dep in City Nat'l Bank to credit of G. W. Peckham.

The Witness:

The next check is No. 628, and the next 680, and the next 707. 628 dated July 16, 1927, for $1,500.00, Wichita Royalty Company signed by E. E. Scannell, the voucher notation of the Wichita Royalty Company shows "Interest Expense on notes held by the City National Bank $1,500.00." On July 16 1927, this check was applied on Wichita Royalty Company note No. 91,730, amounting to

$1,500.00 and held by the City National Bank, to
1031 pay interest $300.00, and to apply on principal $1,200.00; in no manner did this check pass through Mr. Peckham's account, it was applied directly on the note of the Wichita Royalty Company.

Mr. Humphrey:
Offer the check in evidence.

PLAINTIFF'S EXHIBIT 120.

Wichita Royalty Company, Wichita Falls, Texas, No. 628 (Green pencil) Note 91720 July 16, 1927 "19" When properly indorsed pay to the order of City National Bank $1,500.00 To the City National Bank, Wichita Falls, Texas, Wichita Royalty Company by E. E. Scannell for trustee. (Perforated Paid 7-16-27.

The Witness:
The next check is 682, dated January 28, 1928, for $2,000.00, signed Wichita Royalty Company by E. E. Scannell, the voucher notation shows, "Notes payable to apply on note at City National Bank, $2,000.00." On January 28, 1928, this was credited on note No. 6,886, of the Wichita Royalty Company, $1,740.00 on principal and $260.00 on interest. It was applied direct and in no manner passed through the account of George Peckham. It was handled by Teller No. 19, which was the loan and discount teller. Check No. 628 was handled in the same way. Both of the checks were applied in accordance with the voucher notation kept by the Wichita Royalty Company.

Mr. Humphrey:
We offer the check in evidence.

1032 PLAINTIFF'S EXHIBIT 121.

Wichita Royalty Company, Wichita Falls, Texas, No. 682 (Green pencil) Note 3347 (31) circled January 28, 1928 When properly indorsed pay to the order of City National Bank $2,000.00 To the City National Bank, Wichita Falls, Texas, Wichita Royalty Company by E. E. Scannell for trustee. Perforated Paid 12-8-1928.

The Witness:

The next check is No. 717, signed Wichita Royalty Company by E. E. Scannell, payable to City National Bank, $220.00, the voucher notation shows, "Interest account, to payment of interest on note at City National Bank, $220.00." On May 17, 1928, that was paid on note No. 10,-636 for $11,000.00, Wichita Royalty Company and that applied on the interest. In no manner did it pass through the account of G. W. Peckham. This was handled by teller No. 19, and applied direct.

Mr. Humphrey:

We offer in evidence check No. 717, Plaintiff's Exhibit 122.

PLAINTIFF'S EXHIBIT 122.

Wichita Royalty Company, 1002 Staley Building, Wichita Falls, Texas No. 717 May 17, 1928, Circled (Green pencil) Int note 6886 When properly indorsed pay to the order of City National Bank "19" $220.00 To the City National Bank, Wichita Falls, Texas Wichita Royalty Company by E. E. Scannell for trustee. (Perforated Paid 5-17-28.

1033 The Witness:

Check No. 721, dated June 1, 1928 for $424.66, signed by E. E. Scannell, voucher notation shows it was

given for interest on note at the City National Bank, for $424.66. One June 1, 1928, that was applied on note No. 11,167, for $21,000.00, of the Wichita Royalty Company and was in payment of interest and was applied direct and did not pass through the account of G. W. Peckham, but went direct to the credit of Wichita Royalty Company's note and was handled by Teller No. 19.

Mr. Humphrey:
We offer it in evidence.

PLAINTIFF'S EXHIBIT 123.

Wichita Royalty Company, 1002 Staley Building, Wichita Falls, Texas No. 721 June 1, 1928 "19" (39) circled (Green pencil) Int on note 7552. $424.66 When properly indorsed pay to the order of City National Bank To the City National Bank, Wichita Falls, Texas, Wichita Royalty Company by E. E. Scannell, for trustee. Perforated Paid 6-1-28.

The Witness:
Check No. 733, signed by E. E. Scannell, dated July 23, 1928; the voucher notation shows, "Interest expense, interest on note held by City National Bank, $220.00." On July 23, 1928 that applied on note No. 13,096 for $11,000.00 of the Wichita Royalty Company and was in payment of interest. Credited on the note, on the interest due on the note of the Wichita Royalty Company and did
1034 not pass through Mr. Peckham's account.

Mr. Humphrey:
We offer the check in evidence, "Plaintiff's Exhibit 124."

PLAINTIFF'S EXHIBIT 124.

Check, Wichita Royalty Company, Wichita Falls, Texas, 1002 Staley Building, No. 733 "19" (31) circled (in green pencil) Int Note 10636 $220.00 When properly indorsed pay to the order of City National Bank To the City National Bank, Wichita Falls, Texas, Wichita Royalty Company, by E. E. Scannell for trustee. Perforated Paid 7-23-28.

The Witness:

The next check, 768, dated December 4, 1928 for $2,000.00, signed by E. E. Scannell, Wichita Royalty Company, voucher notation shows "Notes payable to apply on notes payable, City National Bank, $2,000.00." On December 4, 1928 it was applied on note No. 17,453, for $11,000.00 of the Wichita Royalty Company. That was on principal $1,531.64 and interest $468.36, making a total of $2,000.00; the check was applied against the obligation of the Wichita Royalty Company and did not pass through the account of G. W. Peckham.

Mr. Humphrey:

We offer the check in evidence.

PLAINTIFF'S EXHIBIT 125.

Wichita Royalty Company, 1002 Staley Building, Wichita Falls, Texas. No. 768 December 4, 1928 (310 circled) (Green pencil) Note 1538 and 13096 $2,000.00
1035 When properly indorsed pay to the order of City National Bank To the City National Bank, Wichita Falls, Texas. Wichita Royalty Company by E. E. Scannell for trustee "19" (Perforated) Paid 12-4-28.

The Witness:

Check No. 791 for $1,500.00 dated February 19, 1929, signed by E. E. Scannell, voucher notation shows, "Notes payable to apply notes held by City National Bank, $1,500.00." On February 23, 1929, that was applied on note

No. 20,232, in the amount of $9,468.36, that being the note of the Wichita Royalty Company. On principal $1,287.51, interest, $212.49, making a total of $1,500.00. That was applied direct to the note of the Wichita Royalty Company and did not pass through the account of G. W. Peckham.

Mr. Humphrey:
We offer the instrument in evidence.

PLAINTIFF'S EXHIBIT 126.

Wichita Royalty Company, 1002 Staley Building, Wichita Falls, Texas. No. 791. February 19, 1929 "19" (31) Circled When properly indorsed pay to the order of City National Bank $1,500.00 To the City National Bank, Wichita Falls, Texas. Wichita Royalty Company by E. E. Scannell for trustee. (Perforated) Paid 2-23-29.

The Witness:
Check No. 814 for $1,500.00, dated June 7, 1929, signed by E. E. Scannell, the voucher notation of the Wichita Royalty Company on that check, interest ex-
1036 pense, to interest on notes at the City National Bank, $1,500.00." On June 7, 1929, that was applied on Note No. 23,631 for $21,000.00, Wichita Royalty Company, and it was on principal, $350.65, and on interest $1,149.35, making a total of $1,500.00. That was applied direct to the Wichita Royalty Company's note and did not pass through the account of G. W. Peckham.

Mr. Humphrey:
We offer the check in evidence.

PLAINTIFF'S EXHIBIT 127.

Wichita Royalty Company, 1002 Staley Building, Wichita Falls, Texas No. 814, June 7, 1929 (Stamped) June 8.

1928 (Green pencil) Note 20231 (Pencil) 3344 R (31) circled "19" When properly indorsed pay to the order of City National Bank $1,500.00 "2" To the City National Bank, Wichita Falls, Texas. Wichita Royalty Company, by E. E. Scannell for trustee. Perforated Paid 6-8-29.

The Witness:

The next one is 824, dated 7-15-29, for $212.49, signed by E. E. Scannell. The voucher notation shows interest expense on notes of company, $212.49. On July 15, 1929 that was applied on note No. 24,777 in the amount of $8,-180.85. That was a note of the Wichita Royalty Company, and there was $53.13 on principal and $159.36 on interest, total of $212.49. That was applied direct to the note of the Wichita Royalty Company and did not pass through the account of G. W. Peckham.

Mr. Humphrey:

We offer the check in evidence.

1037 PLAINTIFF'S EXHIBIT 128.

Wichita Royalty Company, Wichita Falls, Texas, 1002 Staley Building No. 824, July 15, 1929 (31) in circle "19" (Green pencil) Note 20232 $212.49 When properly indorsed pay to the order of City National Bank To the City National Bank, Wichita Falls, Texas Wichita Royalty Company, by E. E. Scannell, for trustee. (Perforated) Paid 7-15-29.

The Witness:

The next one is No. 836, dated August 30, 1929, for $1,-000.00 signed by E. E. Scannell, the voucher notation shows, "Notes payable to apply on note for money borrowed from City National Bank, $1,000.00." On August 20, 1929, that was applied on note No. 26,135, total amount of the note, $29,194.63, which was on principal $399.39, on interest, $600.61, making a total of $1,000.00. This

check was applied direct to the note of the Wichita Royalty Company, and did not pass through the account of G. W. Peckham.

Mr. Humphrey:
We offer the check in evidence.

PLAINTIFF'S EXHIBIT 129.

Wichita Royalty Company, 1002 Staley Building, Wichita Falls, Texas. No. 836 August 30, 1929 "19" (31) circled (Green pencil) Note 24777 and 23631. When properly indorsed pay to the order of City National Bank, Wichita Falls, Texas. $1,000.00. To the City National Bank, Wichita Falls, Texas. Wichita Royalty Company, by E. E. Scannell, for trustee) (Perforated) Paid 8-29-29.

1038 The Witness:
George Peckham died November 7, 1929, shortly after this check I have testified about for $1,000.00.
Check No. 856, dated 11-23-29, was given after Mr. Peckham's death. Mr. Scannell was appointed trustee to succeed Mr. Peckham.
The voucher notation with reference to check for $1,500.00, says, "that is on notes payable to apply on notes at the City National Bank, $1,500.00. Pencil notation shows $1,500.00 interest, $564.61, principal $935.39. On November 23, 1929 that was applied on note No. 26,135, and in the total amount of $28,795.24, and that applied on principal $1,500.00, that was applied direct to the note of the Wichita Royalty Company. That was the same running debt that the Wichita Royalty Company had owed.

Mr. Humphrey:
We offer the check in evidence.

PLAINTIFF'S EXHIBIT 130.

Wichita Royalty Company, 1002 Staley Building, Wichita Falls, Texas. No. 856, November 23, 1929 "19" (31) circled (Green pencil) Note 26135 $1,500.00 When properly indorsed pay to the order of City National Bank To the City National Bank, Wichita Falls, Texas Wichita Royalty Company by E. E. Scannell for trustee. (Perforated) Paid 11-23-29.

The Witness:

Check No. 856 was signed by E. E. Scannell as trustee. Check No. 880, dated January 24, 1930, payable to the order of Marlborough Addition, $1,500.00, signed
1039 Wichita Royalty Company by E. E. Scannell, the voucher shows, "Notes receivable, Texas Investment Company, loans to Texas Investment Company, in which Wichita Royalty Company owns one-half of the capital stock for one year at eight percent interest, money to be used for current obligations on Marlborough Addition, Wichita Falls, Texas, $1,500.00." The proceeds of that check was deposited to the account of the Texas Investment Company, Wichita Falls, Texas, January 25, 1930, and the voucher notation says, "To loan to Texas Investment Company." It was deposited to their credit. I do not know who made out the deposit slip.

Mr. Humphrey:

We offer the deposit slip in evidence, marked "Plaintiff's Exhibits 131 and 132."

PLAINTIFF'S EXHIBIT 131.

City National Bank Deposited by Texas Investment Co. of Wichita Falls, Wichita Falls, Texas, 1-25-1930.

Checks as follows:

Wichita Royalty Co.		1,500.00
N/P "6"		
Original 10	Total	$1,500.00

PLAINTIFF'S EXHIBIT 132.

(Check) Wichita Royalty Company, 1002 Staley Building, Wichita Falls, Texas. January 24, 1930 No. 880 (29) circled When properly indorsed pay to the order of Marlborough Addition $1500.00 To the City National Bank, Wichita Falls, Texas. Wichita Royalty Company by E. E. Scannell for Trustee. Perforated Paid 1-25-30 "6".

1040 The Witness:

The next check is 890 for $1,000.00, signed Wichita Royalty Company by E. E. Scannell; the voucher notation is "Notes payable to apply on note at City National Bank, interest expense. Interest on $26,846.20, balance from February 24, 1930 for ninety days, $1,000.00. That voucher, as well as the check, was made during Mr. Scannell's administration of the Wichita Royalty Company. The check was applied on the note, Wichita Royalty Company, held by City National Bank, principal $457.12, and interest $542.88. Applied on Note No. 31,-496.

Mr Humphrey:

We offer it in evidence.

PLAINTIFF'S EXHIBIT 133.

Wichita Royalty Company, 1002 Staley Building, Wichita Falls, Texas. No. 890 February 24, 1930 (31) circled in pencil Note 28881 (in green pencil) "19" When properly indorsed pay to the order of City National Bank $1,000.00 To the City National Bank, Wichita Falls, Texas. Wichita Royalty Company by E. E. Scannell, for trustee. Perforated Paid 2-24-30.

Mr. Humphrey:

We also offer in evidence, and ask that it be photostated, the voucher notation from the duplicate records, check 880.

(Marked "Plaintiff's Exhibit 134" as follows:)

1041 PLAINTIFF'S EXHIBIT 134.

Notes Receivable—Texas Investment Company: To Loan to the Texas Investment Company (in which Wichita Royalty Company owns One-Half of the Capital Stock) for one year at 8% interest. Money to be used for current obligations, etc., on Marlborough Addition, Wichita Falls, Texas. $1,500.00, 880, January 24, 1930 Marlborough Addition $1,500.00. City P1 107. Indorsed Marlborough Addition, Texas Investment Co. of Wichita Falls. Paid 1/25/30.

1042 Mr. Humphrey:

Also the voucher notation, check No. 890, and ask that it be photostated.

(Marked "Plaintiff's Exhibit 135" as follows:)

PLAINTIFF'S EXHIBIT 135.

Notes Payable:	$ 457.12
To apply on Note at the City National Bank.	
Interest Expense:	542.88
Interest on $26,846.20 balance from February 24, 1930, for 90 days.	$1,000.00

890

February 24, 1930. City National Bank $1,000.00. No indorsement—Paid 2-24-30—City On Note 28881 Prin. 457.12. Int. 542.88.

1043 The Witness:

The books of the City National Bank show the indebtedness owing by the Wichita Royalty Company

at the date of the application of check No. 890 for $1,000.00 to be $27,848.20, both principal and interest handled together. On Mr. Scannell's books the voucher notation shows, interest on note for that same amount. That amount is shown, when he gave his check on February 24, 1930, that shows a difference of $1,000.00 on the account, which is the amount of this check here; so that deducting the amount of the check his books correspond directly with the records of the City National Bank as to the amount of that note. That was made after Mr. Scannell became trustee and after Mr. Peckham died.

Check No. 898, dated 4-10-30, for $1,000.00, signed by E. E. Scannell, the voucher notation shows, "Notes payable, to apply on note at City National Bank, $1,000.00." Interest expense on note at City National Bank, none. The proceeds of that check was applied on principal of the Wichita Royalty Company note No. 4,196, amount $1,000.00; the note was $27,389.08, and after applying this check it reduced the note to $26,389.08. This was the same indebtedness owing at the time George Peckham was trustee that Mr. Scannell was paying on.

Mr. Humphrey:

We offer the voucher notation in evidence, and ask that it be photostated. Plaintiff's Exhibit 136.

1044 PLAINTIFF'S EXHIBIT 136.

Notes Payable: $1,000.00 To apply on note at the City National Bank. Interest Expense: None. On note at the City National Bank. 898. April 10, 1930. City National Bank $1,000.00. (Exhibit 13) No Indorsement—Paid 4-10-30. City—Pay on note No. 31496.

1045 Mr. Humphrey:

We also offer the check in evidence.

PLAINTIFF'S EXHIBIT 137.

Wichita Royalty Company, 1002 Staley Building, Wichita Falls, Texas. No. 898. April 10, 1930 (31) circled (In green pencil) Note 31496 $1,000.00. When properly indorsed pay to the order of City National Bank To the City National Bank, Wichita Falls, Texas. Wichita Royalty Company by E. E. Scannell for trustee (Perforated) Paid 4-30-30.

The Witness:

I have check No. 908, dated May 13, 1930, of Wichita Royalty Company, signed by E. E. Scannell for $500.00; voucher notation on that item shows, carbon copy says, interest on Marlborough note $500.00, up at the top, and in ink says, "Interest receivable, Texas Investment Company of Wichita Falls." I have a deposit slip deposited to the account of the Texas Investment Company dated May 13, their account received credit for it on the 14th.

Mr. Humphrey:

We offer the deposit slip in evidence.

PLAINTIFF'S EXHIBIT 138.

Wichita Royalty Company, 1002 Staley Building, Wichita Falls, Texas. May 13, 1930, No. 908 "18" (30) circled When properly indorsed pay to the order of Texas Investment Company of Wichita Falls, Texas. $500.00. To the City National Bank, Wichita Falls. Wichita Royalty Company by E. E. Scannell for trustee. (in pencil) cr a/c Texas Inv. Co. (Perforated) Paid 5-14-30.

1046 PLAINTIFF'S EXHIBIT 139.

City National Bank Deposited by Texas Investment Co. Wichita Falls, Texas, 5-13-1930. Checks as follows: Wichita Royalty Co. $500.00 Original 41 Total.

Mr. Humphrey:

Also offer in evidence the voucher notation, and ask that it be photostated, Wichitar Royalty Company.

(Marked "Plaintiff's Exhibit 140" as follows:)

PLAINTIFF'S EXHIBIT 140.

Notes Receivable:

Texas Investment Co. of Wichita Falls. Interest on Marlborough Notes 500.00, 908. P1 108 May 13, 1930. Texas Investment Company of Wichita Falls, Texas 500.00 City—Indorsed Cr a/c Texas Invest. Co. J. T. H. Paid 5-14-30.

1047 The Witness:

The Texas Investment Company was the successor of Marlborough Addition. The original owners of the Marlborough Addition were, J. A. Kemp, J. T. Harrell, W. H. Peckham and G. W. Peckham; later on J. T. Harrell and J. A. Kemp and G. W. Peckham and W. H. Peckham; later on J. T. Harrell and J. A. Kemp and G. W. Peckham organized the Texas Investment Company or started it prior to the time of George Peckham's death, Mr. Peckham signed the charter. The corporation was formed to take over the assets of the Marlborough Addition, and this is the Texas Investment Company that the money was credited to.

The next check, 920, for $1,500.00, signed Wichita Royalty Company dated June 14, 1930, payable to the order of City National Bank, the voucher notation says, "Notes payable to apply on indebtedness $1,500.00, on checks dated June 14, and canceled paid June 18, 1930. On June 18, 1930, this check in the amount of $1,500.00 was credited on the note of the Wichita Royalty Company, No. 31,496, for $26,389.80. After applying this check it left a balance of $24,889.08. Applied on the note of the Wichita Royalty Company in June, 1930.

Mr. Humphrey:

We offer the check in evidence.

PLAINTIFF'S EXHIBIT 141.

Wichita Royalty Company, 1002 Staley Building, Wichita Falls, Texas. No. 920 June 14, 1930 "19" (31) circled (H) (In Green pencil) Note 31496 $1500.00. When
1048 properly indorsed pay to the order of City National Bank To the City National Bank, Wichita Falls, Texas. Wichita Royalty Company by E. E. Scannell for trustee (Perforated) Paid 6-18-30.

Mr. Humphrey:

Also voucher notation, and ask that it be photostated.

(Marked "Plaintiff's Exhibit 142" as follows:)

PLAINTIFF'S EXHIBIT 142.

Notes Payable:

To apply on indebtedness $1500.00, 920. June 14, 1930. City National Bank $1500.00. On note No. 31496—City Plaintiff's Exhibit 14—No Ind. Paid June 16, 1930.

1049 The Witness:

The next item is check No. 930 for $3,055.42, payable to the City National Bank, Royalty Company, E. E. Scannell. The voucher notation, "Notes payable to payment on note and interest $3,055.42." The ink notation up here says, "Principal $2889.08, interest $166.34, total $3,055.42." That check was applied in accordance with the voucher on July 15, 1930, Wichita Royalty Company note No. 31,496, interest $293.33. No, I testified wrong, the interest is $459.67, principal $2,595.75, making a total of $3,055.42. That left the amount of that note at that date $22,293.33, after applying this payment, which is the amount of the principal today, there has never been paid any more after that date, and the suit was filed shortly after that on the note.

Mr. Humphrey:

We offer the check in evidence.

PLAINTIFF'S EXHIBIT 143.

Wichita Royalty Company, 1002 Staley Building, Wichita Falls, Texas. July 14, 1930. No. 930. (31) circled "19" "2" (Green pencil) Note 31496. (Pencil) 3344 Will ——— When properly indorsed pay to the order of City National Bank $3,055.42. To the City National Bank, Wichita Falls, Texas Wichita Royalty Company, by E. E. Scannell for trustee. (In pencil) 686192 (Perforated) Paid 7-16-30.

Mr. Humphrey:

Also the voucher notation we offer in evidence, and ask that it be photostated, Plaintiff's Exhibit 144.

1050 PLAINTIFF'S EXHIBIT 144.

(Principal	2,889.08	
Interest	166.34	
Total	$3,055.42)	
		3,055.42
		930

July 14, 1930

City National Bank 3,055.42

Plaintiff's Exhibit 15.

City No end. Paid 7-16-30. Pay on note 31496.

1051 The Witness:

I have an item here for $6,000.00 check payable to W. C. Duncan, signed by W. L. Stewart Gill, Assistant Cashier, indorsed pay to the order of G. W. Peckham for Bristow Royalty, W. C. Duncan, indorsed G. W. Peckham, I have made an analysis of that transaction. That

money never went to the account of Wichita Royalty Company to my knowledge. There is not any record where that money was ever transferred from the account of the Wichita Royalty Company to Peckham's account in the City National Bank. The check was deposited direct to the credit of G. W. Peckham, in his individual ledger account, February 15, 1928, I have the original deposit slip, in the handwriting of G. W. Peckham, he made it out himself, and he was given credit for it in his individual account on February 15, 1928. The cashier's check was paid February 16, 1928. It is dated February 6, 1928.

Mr. Humphrey:

We offer the deposit slip in evidence, Plaintiff's Exhibit 145.

PLAINTIFF'S EXHIBIT 145.

City National Bank. Deposited by G. W. Peckham, Wichita Falls, Texas, 2-15-1928. Checks as follows: "7" 6,000.00.

The Witness:

This is the genuine indorsement of Mr. Peckham across the back of that check I am familiar with his handwriting. This is a cashier's check issued by the Wichita State Bank and Trust Company, payable to W.
1052 C. Duncan for $6,000.00, indorsed W. C. Duncan to the order of G. W. Peckham, and indorsed by G. W. Peckham and deposited to G. W. Peckham's personal account in the City National Bank.

Mr. Humphrey:

We offer the check in evidence.

PLAINTIFF'S EXHIBIT 146.

Wichita State Bank & Trust Co., 88-132 No. 12328. Wichita Falls, Texas, Feb. 6, 1928. Pay to the order of W. C. Duncan $6,000.00. Cashier's check (signed) W. L. Stewart Gill, Ass't Cashier. (Indorsed) Payable to order of G. W. Peckham for Bristow Royalty. W. C. Duncan, G. W. Peckham. (Perforated) paid 2-16-28.

The Witness:

After this lawsuit came up, I went into the matter to find out the history of it. This was on the Hattie Vaughan Royalty sale, to W. C. Duncan, at lease they were the agents. I have a check dated January 15, 1928, payable to White and Duncan for $300.00, signed by G. W. Peckham, and says, "Commission on Hattie Vaughan Royalty." This check is indorsed White and Duncan, through the Wichita State Bank and Trust Company and paid by the City National Bank on February 16, 1928.

Mr. Humphrey:

We offer the check in evidence.

PLAINTIFF'S EXHIBIT 147.

Wichita Falls, Texas, 2-15-1928. No. ——— k-61. The City National Bank of Wichita Falls. Pay to the order of White & Duncan $300.00. (Signed) G. W. Peckham. This check is in full settlement as shown hereon. Acceptance by indorsement constitutes receipt in full. Com. on Hattie Vaughan Royalty. (Indorsed) White & Duncan. Perforated paid 2-16-28.

1053

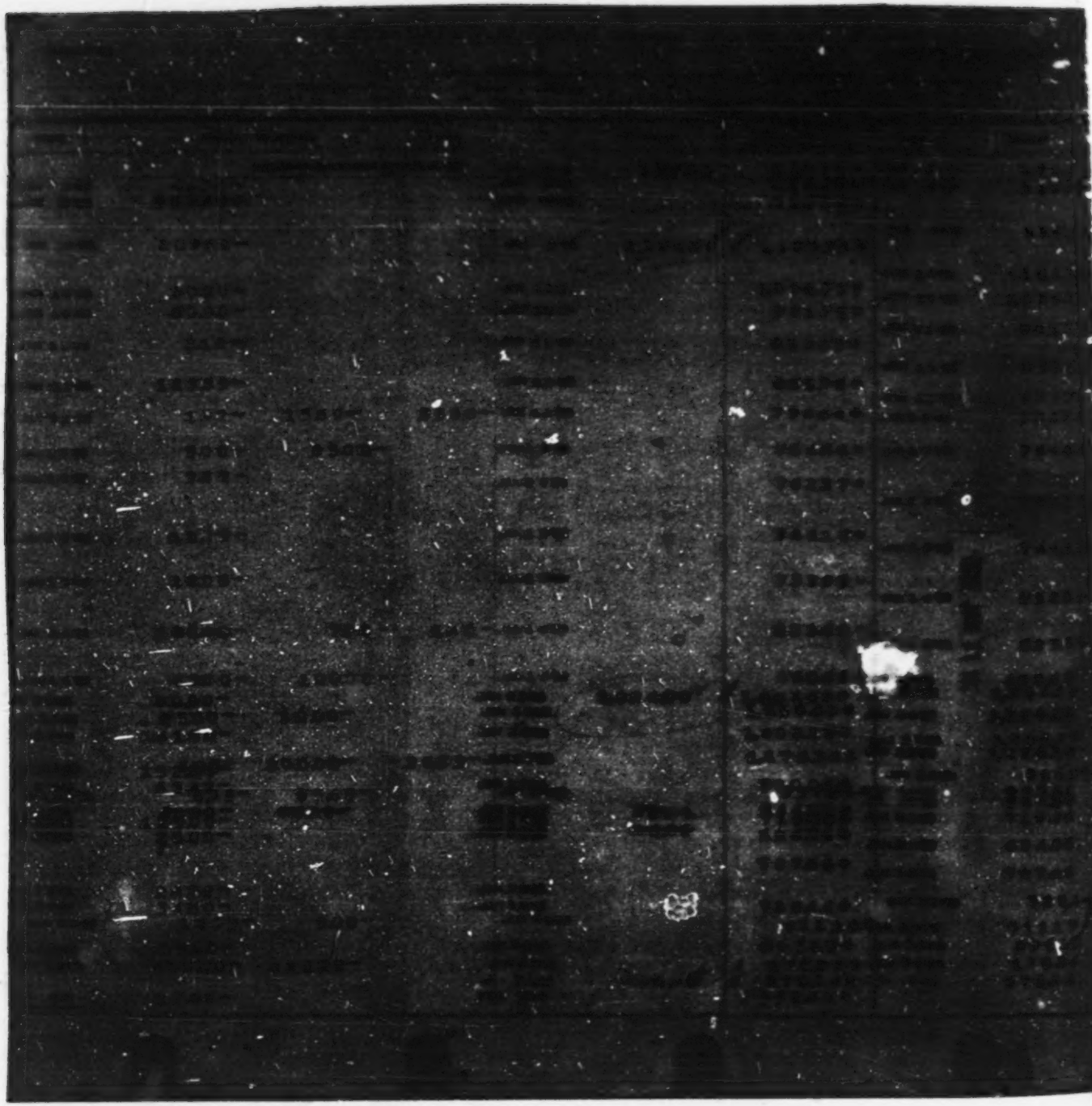
The Witness:

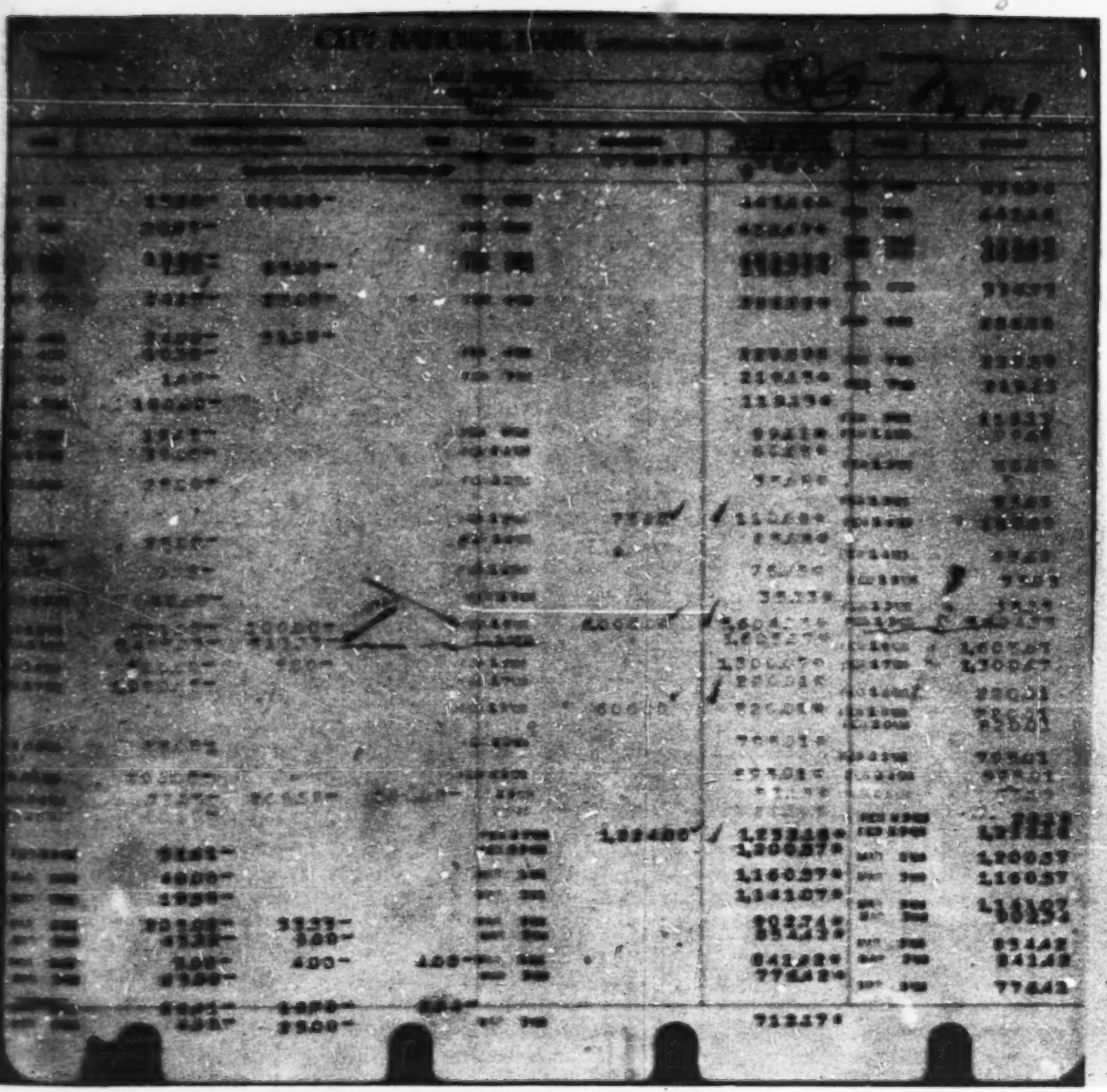
I identify that from my investigation, as a commission check on the sale of this royalty. The check was paid by the City National Bank and charged to Mr. Peckham's account. The City National Bank never appropriated

any part of that sum to itself in any way, it was deposited to the general deposit account of G. W. Peckham and checked out by him in the usual course of business. There is nothing in the records of the bank that connected that transaction with any dealings of the Wichita Royalty Company. I do not know whether Mr. Peckham accounted for the balance of that to the Wichita Royalty Company or not. Here is a deposit of $6,000.00 on February 15, 1928, in the general ledger account of Mr. Peckham, he immediately, or soon thereafter, drew that out. The ledger account was quite active.

Mr. Humphrey:

We offer in evidence the ledger account and ask that it be photostated.





1055a The Witness:

The other item for the sale of royalties is the Wilson Royalty, which sale was not evidenced by an escrow with the City National Bank. They had no escrow file on that. The bank did have an escrow file on the sale of the royalty to the Petroleum Royalties Corporation signed by Wichita Royalty Company by G. W. Peckham, and the Petroleum Royalty Company by James A. White, dated November 25, 1927. The escrow files were kept in a separate department in the bank from where the receiving and paying tellers were, that file was under the supervision of W. S. Abbott. With reference to whether or not the proceeds on the sale of that royalty went to the individual credit of G. W. Peckham, I do not have the checks to identify those deposits, I only have the dates and the amounts of the deposits, as follows:

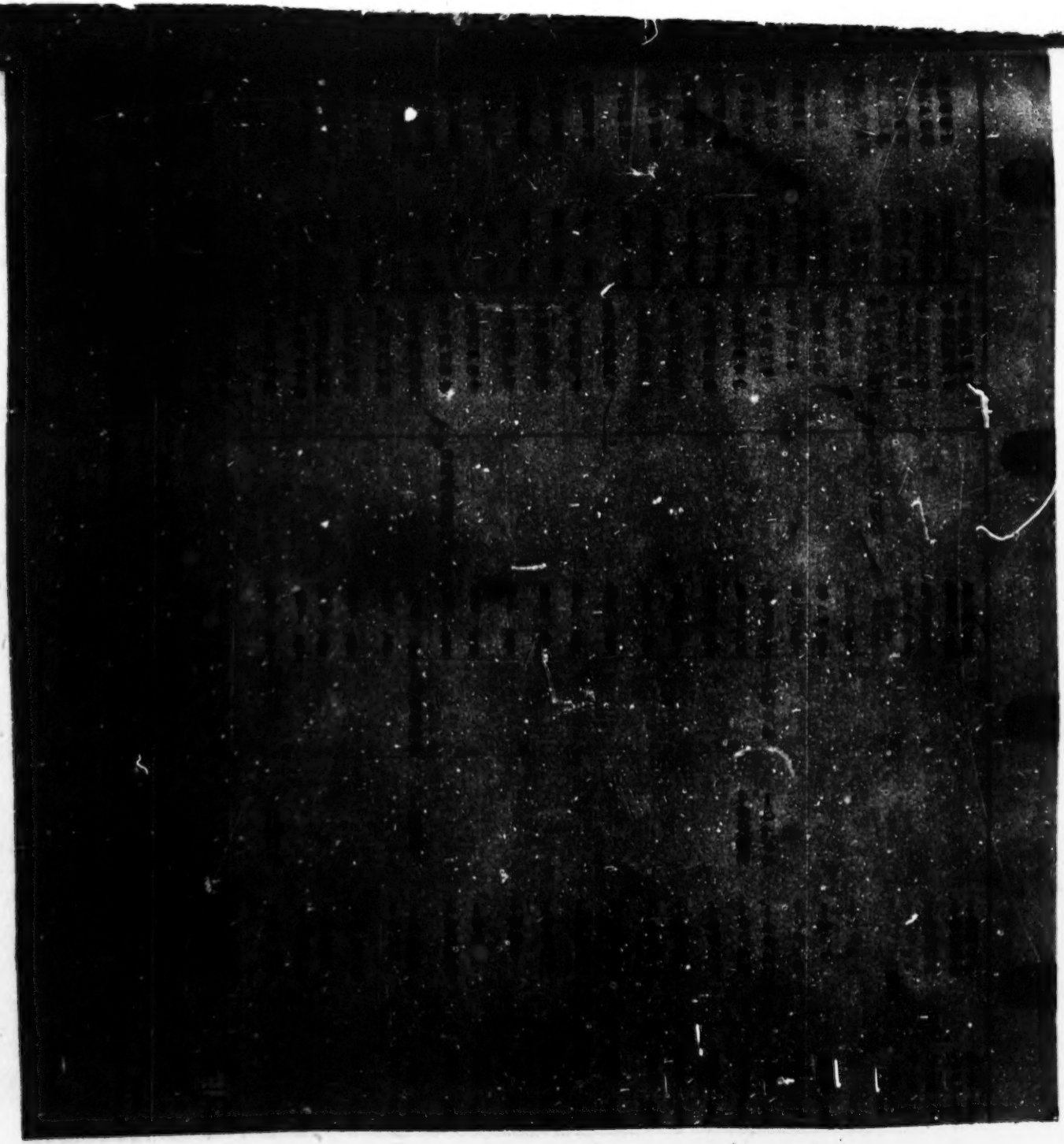
Recites on the back of this contract, received, $1,208.00 January 9, 1928, Note No. 1, Wichita Royalty Company, by G. W. Peckham. I have another item on the back of this contract, received $1,216.00, January 25, 1928, note No. 2, Wichita Royalty Company, by G. W. Peckham. Also states, received $1,224.00 February 28, 1928, Wichita Royalty Company by G. W. Peckham, Trustee. I have a deposit slip dated January 9, 1928, for $1,200.00 to the account of G. W. Peckham, and I have an idea that is the item. I am endeavoring to run that down at this time. And I have a deposit slip January 25, 1928, to G. W. Peckham, for $1,224.00. This amount on January 9, stated on the back of the contract, was $1,208.00 and there was

1055b $1,200.00 deposit January 25, says, received $1,216.00, and there was $1,224.00 deposit. Each one of these deposits are in one item. The $1,224.00 item was made of three different items. The $1,200.00 was one item on February 28, 1928, a deposit to G. W. Peckham of $1,224.00, and it stated on the back of the contract that he received $1,224.00 on the 28th of February, 1928. The date of the deposit is February 29. The original cash consideration was $2,400.00. I have a de-

posit to G. W. Peckham on December 5, 1927, for $2,400.00, November 25, 1927. It does not show when that payment was made. In other words, I do not have any evidences of those deposits in the bank to the credit of G. W. Peckham himself, unless those various deposit slips I have would correspond to it. I have Mr. Peckham's individual ledger sheet, showing the deposit made during that period of time. This is the original record which you now hand me, of the bank, showing Mr. Peckham's deposit account beginning November 25, and this sheet says November 1927 and ends January 5, 1928, continuing through February; those two sheets correctly reflect the deposits and withdrawals from Peckham's individual account during that period, and it leaves some money to Mr. Peckham's account at that time, and that sheet would reflect it, and is correct, and would also show the manner in which it was withdrawn.

Mr. Humphrey:

We offer these sheets in evidence, and ask that both sides be photostated, Plaintiff's Exhibit 149.



CITY NATIONAL BANK

1058 The Witness:

I do not know in what manner the Petroleum Royalty Syndicate made these payments, I have no records in the bank other than the escrow. I have no other evidence or records to show that these sums were deposited by Mr. Peckham in the City National Bank, except as detailed. I have no idea whether Mr. Peckham deposited this $2,400.00 check in this deposit item or not; or whether the Petroleum Royalties Corporation paid Mr. Peckham direct, I did not find where this sum was ever deposited to the credit of the Royalty Company. This item represents no transfer from the Royalty Company's account to Peckham's account. The contract I have referred to and have been testifying about. is Defendant's Exhibit 16. I do find where Mr. Peckham paid a commission on the sale of that royalty, $300.00, to W. C. Duncan. The same date that he paid the commission on the sale of the Vaughan Royalty. W. C. Duncan is a well known broker and oil operator here in Wichita Falls, and a reputable man.

Mr. Humphrey:

We offer in evidence the check to W. C. Duncan, commission on Wilson Royalty, sold to White, Harry White.

PLAINTIFF'S EXHIBIT 150.

Wichita Falls, Texas, 12-5-1927. No. ..... "1" Pay to the order of W. C. Duncan $300.00. This check is in full settlement as shown hereon. Acceptance by indorsement constitutes receipt in full. Com on Wichita Royalty sold to Harry White. (Signed) G. W. Peckham. Indorsed W. C. Duncan. Perforated paid 12-6-27.

1059 The Witness:

Harry White was an oil operator, associated with Mr. Duncan, and well known here.

I do not know any more than I have testified with reference to the sale of the Wilson Royalty and the Vaughan

Royalty, in neither of those sales did the cash go into the account of the Wichita Royalty Company. On February 15, 1928, when that $6,000.00 deposit was made, Mr. Peckham paid the bank $513.33, on his account, on the 15th he did not have sufficient funds in his own account to pay that. I have worked up, with Mr. Lambert, the schedule of the payments that Mr. Peckhm has made on his individual note.

On February 15, 1928, Mr. Peckham paid the bank $513.33. I have worked out a minimum balance schedule as of that date as to what amount of personal funds he had on deposit at the time he made this payment, if you regard this $6,000.00 check of Duncan and White as trust funds. At that time he had personal funds of $335.33, therefore, if the $6,000.00 should be considered as a trust fund of the Wichita Royalty Company, $178.00 would come out of the $500.00 check. That payment was made upon the personal check of George Peckham. He gave that check just like he gave any other, in the due course of business, to the bank.

The Wilson royalty is the $400.00 payment, none of that fund was used on payment of any debt that Peckham owed to the bank, because he made no payments between October 19, 1927, and February 15, 1928, on his liability to the bank; and after that payment to the bank
1060 on February 15, 1928, of this $513.33, he did not make another payment to the bank until July 20, 1928. Unless it could be said that this sum of $178.00 came from the trust funds, from the $500.00 check, the bank did not receive any other part of any of those two deposits.

I have made an analysis with Mr. Lambert, of the payments made during the period of time by Mr. Peckham, on his personal debt, as set forth in paragraph 15 of the cross complainant's bill of complaint, against the City National Bank, where it is alleged that G. W. Peckham paid on his personal indebtedness to the bank the sum of $57,764.21 out of his personal account with the bank; the amount of payment that Mr. Peckham made during

this period of time upon his indebtedness was $57,879.21, and there were some of those payments which he made that came from the royalty company or from the funds transferred from the Royalty Company's account, or funds deposited into these two items we have been talking about; the first one is January 17, 1927, an item of $924.71. The next item is February 15, 1928, for $178.00, both of those items aggregate $1,102.71.

During the time Mr. Peckham worked for the Wichita Royalty Company from 1923 until his death the records of the royalty company show that he drew a monthly salary. In 1923 it was $500.00 per month, and continued to be that amount, and then it was reduced to $400.00 per month, from January, 1925, until the time of his death. The records show that the Wichita Royalty Company issued Mr. Peckham a check each month for his
1061 salary. Each check shows what it is given for.

Most all of the time from November, 1923, up until the time of Mr. Peckham's death, I was employed by the City National Bank. So far as I know, no official or employee of the City National Bank ever concerned himself or made any effort to determine whether Mr. Peckham was drawing a salary, or how much, or to supervise in any way the amount of salary that Mr. Peckham should draw from the Wichita Royalty Company. I have no idea what he did with the money, some of it, the records show, was deposited in the bank.

The deposit liability of the bank to the Wichita Royalty Company, as reflected by its books, at the death of George Peckham, was $1,022.84. There was no change in that account between November 1 and November 8, of that year.

The customers of the bank, including the Wichita Royalty Company, received monthly statements from the bank at the end of each month, they were either mailed out or called for.

The first of December, 1929, the deposit balance of the Wichita Royalty Company with the bank was $731.13.

The Wichita Royalty Company kept a cash journal or ledger showing the deposit balance with the City National Bank. The records of the City National Bank show that the Wichita Royalty Company had on deposit, October 31, 1929, $1,522.84; the books of the Wichita Royalty Company of the same day show a balance of $884.15, with some checks outstanding. The books of the
1062 Wichita Royalty Company at the close of business December 31, 1929, show a balance of $950.88; and the books of the City National Bank at the close of business on the same day show a balance of $1902.30. The Wichita Royalty Company have no other deposit balances as shown by the books of the bank except the ones I have testified from.

As I have stated, each month the Wichita Royalty Company received a transcript of the status of the account of that company, together with the canceled check, showing the balance at the beginning of the month and the deposits made during the month and the checks paid during the month and the balance at the end of the month —that practice was pursued during the entire time Mr. Peckham was trustee, and continued after Mr. Scannell became trustee.

The next item alleged, brought forward in 1936, in the cross complainant's re-casted pleading against the complainant and the bank directors and Peckham transferred approxmiately thirty thousand dollars from the Wichita Royalty's account to his private account in checks issued to him in salary—I have ascertained the amount of the salary that he drew. A great number of those checks were issued by Mr. Scannell, the present trustee. I have not made an accounting as to what Mr. Peckham finally did with the salary checks during the period of time, I don't think that would be possible. It is charged that Mr. Peckham accomplished a misappropriation of money by virtue of these salary checks, through the
1063 facilities and with the active participation of the plaintiff bank, and I will state that I do not know of any participation that the bank had, in the pay-

ment of any salary checks, or any checks that were honored or presented to the bank. They were drawn on the account of the Wichita Royalty Company and signed by an authorized representative of that company and paid by the bank, and that is the extent of my knowledge. The salary drawn by Mr. Robertson was $500.00 per month, the same as Mr. Peckham started with. On December, 1930, is a check issued to E. E. Scannell, says for salary, half of December, 1930, $200.00. Mr. Scannell drew a salary after he became trustee, in the amount of $400.00 per month. While Mr. Peckham was drawing his salary as trustee, Mr. Scannell was also drawing a salary, of $200.00 per month, and at the time Mr. Peckham was drawing a salary of $500.00 per month, Mr. Scannell was drawing a salary of $300.00 per month.

I have examined the voucher record with reference to check No 1,253, which shows, "To apply on last payment of royalty, No. 71, 3/128 total production 160 acres, Grimshaw farm, Young County, Texas, $2,500.00." Also check No. 1,291, "To apply on last payment royalty No. 71, Grimshaw tract, Young County, Texas. Payment $2,500.00. Interest $16.67, total $2,516.67." Pencil notation says, "Cost $7,500.00." The next check is a voucher record on check No. 1,325 to apply on last payment of Royalty interest No. 71, Grimshaw tract, Young County, Texas, $2,500.00. Interest $33.33, total $2,533.33.

1064 Mr. Humphrey:

We offer the voucher records on those three royalties in evidence, and ask that they be photostated, marked "Plaintiff's Exhibits 151, 152, and 153."

PLAINTIFF'S EXHIBIT 151.

To apply on last payment of Royalty Interest #71 Grimshaw tract, Young County, Texas. $2500.00
Interest 33.33

$2533.33

Cost 75.00
1253—2500
1291—2500
1325—2500

May 11, 1923. 1325
George W. Peckham 2533.33

City Nat'l Bank. Paid 5-11-23. Ind. Geo. W. Peckham. E. E. S. for Tr. Dep. to cr of G. W. P.

PLAINTIFF'S EXHIBIT 152.

To apply on last payment royalty interest #71, Grimshaw tract, Young County, Texas.....$2516.67
Payment 2500.00. Interest 16.67. Cost 7500. City Nat. Bank. April 9, 1923. 1291. Paid 4-14-23. Ind. G. W. Peckham. E. E. S. for Tr Dep to Cr of G. W. P. G. W. Peckham 2516.67.

1065 PLAINTIFF'S EXHIBIT 153.

To apply on last payment or Royalty Interest #71 3/128ths total production 160 acres Grimshaw Farm, Young County, Texas $2500.00

#1253—3-10-23 2500.00
1291—4-9-23 2500.00
1325—5-11-23 2500.00

City National Bank $2500.00. Dep to cr of B. L. Fain. City Nat. Bank. Paid 3-10-23. Indorsed Cr Acct B. L. Fain. E. E. S. for Tr.

1066 The Witness:

One of these checks was deposited to the credit of B. L. Fain, I have examined the records of the bank and that is correct. Mr. Fain got credit for that check. G. W. Peckham got credit for checks 1,291 for $2,516.67. also check No. 1,325 for $2,533.33. Those two checks bear the indorsement of G. W. Peckham and are payable to his order. B. L. Fain deposit check was payable to the order of the bank.

Mr. Humphrey:

We offer these in evidence.

PLAINTIFF'S EXHIBIT 154.

Wichita Royalty Company, Wichita Falls, Texas, No. 1253. "55 March 10, 1923. $2,500.00. When properly indorsed pay to the order of City National Bank to City National Bank, Wichita Falls, Texas. Wichita Royalty Company by E. E. Scannell for trustee. (Indorsed) Cr a/c B. L. Fain. Perforated paid 3-10-23.

PLAINTIFF'S EXHIBIT 155.

Wichita Royalty Company, Wichita Falls, Texas, No. 1291. April 9, 1923. "7" $2,516.67. When properly indorsed pay to the order of G. W. Peckham to City National Bank, Wichita Falls, Texas. Wichita Royalty Company, by E. E. Scannell, for trustee. (Indorsed) G. W. Peckham. (Perforated) Paid 4-10-23.

PLAINTIFF'S EXHIBIT 156.

Wichita Royalty Company, Wichita Falls, Texas, No. 1325. May 11, 1923. "7" $2,533.33. When properly indorsed pay to the order of George W. Peckham to City National Bank, Wichita Falls, Texas. Wichita Royalty Company, by E. E. Scannell, for trustee. Indorsed George W. Peckham. Perforated paid 5-11-23.

1067

The Witness:

I found among the papers of the royalty company an escrow contract to purchase this property. I also found among Mr. Peckham's other checks, a check dated 5-7-23, payable to B. L. Fain for $2,516.66. That is the indorsement of B. L. Fain, it appears that two of those payments were delivered to B. L. Fain. This is the contract I found in the escrow file of the City National Bank. It shows the purchase of that Grimshaw Royalty by Wichita Royalty Company by G. W. Peckham. $7,500.00 payable as follows: $2,500.00 cash, receipt of which is hereby acknowledged, $2,500.00 due thirty days from date hereof, and $2,500.00 due sixty days from date hereof. The deferred payments to bear interest at the rate of eight percent per annum until paid. It is further understood and agreed that oil runs on the above described interests collected by the party of the first part from this date, shall be employed as a credit to the party of the second part on final payments recited above.

These payments show a consummation of that contract and the disposition of the funds. The deed has been offered in evidence.

Mr. Humphrey:

We offer the contract in evidence.

(This instrument is the same as instrument marked Defendant's Exhibit 123" and is therefore not copied at this time.)

1068 The Witness:

Check dated 5-15-23, and 5-22-23, to Wichita Royalty Company in the sum of $234.00, and $302.98, the records show that the Wichita Royalty Company received those checks, they were for oil runs on Grimshaw for April, oil runs on Grimshw March 1 to 31, 1923. They are George Peckham's checks. Signed by G. W. Peckham, payable to Wichita Royalty Company, indorsed for deposit to Wichita Royalty Company. These checks were paid out of G. W. Peckham's personal account.

Mr. Humphrey:

I offer these checks in evidence, Plaintiff's Exhibits 157 and 158.

PLAINTIFF'S EXHIBIT 157.

Wichita Falls, Texas, May 22, 1923. No. . . . . "8" City National Bank of Commerce, pay to Wichita Royalty Company or bearer $302.98. Oil runs on Grimshaw for April run by Humble. (Signed) G. W. Peckham. (Stamped on back) For deposit only, G. W. Peckham, as trustee Wichita Royalty Co., 509 Security Nat'l Bank Bldg., Wichita Falls, Texas. 9007. Perforated paid 5-26-27.

PLAINTIFF'S EXHIBIT 158.

Wichita Falls, Texas, 5-15-1923. No. . . . . "8" City National Bank of Commerce. Pay to Wichita Royalty Co., or Bearer, $234.05. Oil runs on Grimshaw March 12 to 31, 1923. (Signed) G. W. Peckham. (Stamped on back) For deposit only, G. W. Peckham, as Trustee Wichita Royalty Co., 509 Security National Bank Bldg., Wichita Falls, Texas. 9114. Perforated paid 5-16-23.

1069 Mr. Rogers:

I wish the record to show that the Royalty Company has offered Defendant's Exhibit 123, and it is

offered for no other purpose other than to show it was a transaction between the individual and the trustee acting in a dual capacity, and its binding effect is not admitted, but is denied. And its offer for any other purpose is withdrawn, it is only offered for the purpose of showing the personal interest of the trustee dealing with himself in a transaction that has been repudiated by the pleadings and is still repudiated by the facts.

The Witness:

Exhibit 158 shows oil runs from March 12 to 31, 1923; exhibit 157 shows oil runs for the month of April by the Humble. The books of the Wichita Royalty Company show that it has received currently the oil runs from that property ever since it was acquired. I have not checked the amount, in round figures I would say eighty-five or eighty-six hundred dollars. The production from that property is in excess of the purchase price, and they are still receiving a little oil from it.

Check No. 169, payable to G. W. Peckham, signed by E. E. Scannell for $1,200.00, dated February 29, 1924, shows to purchase of 1924, Special Six Studebaker, $1,200.00. G. W. Peckham got credit for that check in his personal account, in the City National Bank, charged against the deposit account of Wichita Royalty Company. The records show Mr. Peckham paid $1,702.95 for that car, August 25, 1923. This check is dated February 29,
1924. The records of the Wichita Royalty Com-
1070 pany show they kept the car two years and seven months and sold it for $550.00.

Check 154 is a check payable to B. L. Fain, signed by E. E. Scannell for the Wichita Royalty Company; check 185 is a check of $9,250.00, signed by E. E. Scannell for the Wichita Royalty Company, payable to G. W. Peckham. The voucher record on check 154 shows purchase of royalty interest in Tonkowa in Creek County, Oklahoma, $12,000.00, Lumzy Deer Farm, Carmichael farm, Ceverlin, McDaniel farm, and Goldry farm. In pencil it says, "See letter to G. W. Peckham, Wichita Royalty Company,

dated March 17, 1924. This money to apply on Wilson Royalty instead of above." I do not find that.

The next voucher, No. 185, shows to cover the difference in purchase price of Tonkawa-Deer royalty, see check No. 154, purchase price of $27,500.00, for one-eighth royalty on Luke Wilson eighty acres, block 27, Ray, Massie, Featherstone and Staniforth leases. Total cash payable $21,250.00, to be paid from oil, $6,250.00, the amount of the check is $9,250.00. The total of the two checks aggregate $21,250.00. From my investigation I know that Mr. Peckham made a deed to 1/8th of this royalty to the Wichita Royalty Company. He got credit on February 2, 1924, for $12,000.00 and on March 18, 1924, he got credit for $9,250.00. Mr. Peckham bought this royalty originally from F. L. Wilson, he got the full one-eighth royalty under these two tracts of land, I don't remember
1071 the block number, they are lots 13 and 14, block 27, of the American Tribune new colony subdivision, Archer County, Texas.

Mr. Humphrey:

We offer the deposit slips in evidence, Plaintiff's Exhibits 159 and 160.

PLAINTIFF'S EXHIBIT 159.

City National Bank. Deposited by G. W. Peckham, Wichita Falls, Texas, 2-2-1924. Check as follows: $12,000.00. "8" Total.

PLAINTIFF'S EXHIBIT 160.

City National Bank. Deposited by G. W. Peckham, Wichita Falls, Texas, 3-18-1924. Checks as follows:

	9,250.00
"7"	35.00
7748	7.36
Total	$9,292.36

The Witness:

The records I have investigated show the history of that purchase; Mr. Peckham sold to J. H. Massie, undivided 1/16th interest in this block of land, for a consideration of $75,000.00 cash and $25,000.00 out of the payment of oil. The next, G. W. Peckham sold the United Royalty Company 3/32nds of 1/8th for a consideration of 27,000.00, which was more than the consideration he got from the Wichita Royalty Company. The sale price on that very unit was $9,000.00 to the United Royalties.

When I say unit, I mean 1/32nd of 1/8th, the
1072 consideration. The unit price to the Wichita Royalty Company was $6,875.00 for 1/32nd of 1/8th and to the United Royalty Company it was $9,000.00. He sold the King Royalty 1/32nd of 1/8th for $8,500.00. He also sold R. A. King 2/32nd of 1/8th for $20,000.00, which was a unit price of $10,000.00 for 1/32nd of 1/8th. The Wichita Royalty Company's total sale price was $27,500.00, for the oil assumption. That is all I have that he sold to. He did sell 1/128th interest to the Tolowa Royalties, Incorporated, the revenue stamps indicate a consideration of $12,500.00. He sold the Wichita Royalty Company 1/64th for $27,500.00, and the consideration of the Tolowa was 1/128ths for $12,500.00, according to the revenue stamps. $12,500.00 represents the cash payment, and not the assumption, the assumption was 1/16th of the $50,000.00 indebtedness against it. They sold another one, 1/128th interest, cash paid $12,500.00, revenue stamps $12.50. There were three sales, 1/128th interest and the revenue stamps on that was $12.50. The activity in dealing with these royalties along about that time, all of these, were made about the same time, these sales. One of them on the 10th of May, 1924, one on May 24, 1924, and one on April 22, 1924, and the sale to the Wichita Royalty Company was March 17, 1924. The United Royalty Company, April 8, 1924, King Royalty Company, March 1, 1924, R. A. King, March 1, 1924, and to Mr. Massie, March 15, 1924. Mr. Peckham acquired it around the first of March, 1924, it was filed

March 8, 1924. About that time the Ray,
1073 Featherstone and Massie pool came in out there. The date of the instrument from Wilson to George Peckham is March 8, 1924. Peckham paid for that royalty $100,000.00 cash and $50,000.00 in oil. George Peckham gave his check on March 7, 1924, to L. F. Wilson for $20,000.00 and on March 18, 1924, for $80,000.00 showing that he paid $100,000.00 in cash, out of his personal account. This was the royalty that he sold to the Petroleum Royalties Corporation, $6,000.00 in 1927, I have not checked to see what that produced. The records of the Wichita Royalty Company show that it was a producing royalty and produced considerable. Defendant's Exhibit 40, shows production from this royalty, $25,475.04. We are talking about property No. 75.

Property No. 76, paragraph 57 of the bill of complaint, alleges a misappropriation of $21,000.00 evidenced by two checks, one of $10,000.00 and one of $11,000.00. Check No. 237 is dated July 2, 1924, payable to the order of the Security National Bank for $11,000.00, signed by E. E. Scannell for the Wichita Royalty Company, the voucher record shows, "To purchase of interest in lots 9 and 10, block 41, J. H. White lands, Archer County, Texas, $11,000.00, total cost $21,000.00. The voucher record with reference to check No. 246, $10,000.00, "to purchase of interest in lots 9 and 10, block 41, J. H. White lands, Archer County, Texas, $10,000.00. These two checks are both payable to the Security National Bank, which was operating in Wichita Falls, Texas. Mr. Peckham carried
an account there personally. The books and rec-
1074 ords show that the Wichita Royalty Company carried an account at the Security National Bank at that time. Those two checks were cleared by the Security National Bank and paid by the City National Bank, by an indorsement across the back, Security National Bank, Wichita Falls, Texas. Clearing House, paid Wichita Falls, Texas, July 26, 1924. The other one is Security National Bank, Wichita Falls, Texas, clearing house—it says July, 1924, Wichita Falls, Texas, handled

by Teller No. 4 of the Security National Bank, it has the teller stamp on it of the Security National. It is not indorsed by anybody except the Security National Bank. I have not been able to check those two items and see where the funds went from the Security National Bank and how they went out of that bank and into whose credit, because those records have been destroyed. I have talked to the party who purchased the assets of the Security National Bank and cannot find the record. That bank went into liquidation several years ago, and a receiver appointed, Mr. Sage, who told me the records had been destroyed.

Mr. Humphrey:

We offer the two checks in evidence, Plaintiff's Exhibits 161 and 162.

PLAINTIFF'S EXHIBIT 161.

Wichita Royalty Company, Wichita Falls, Texas, No. 246. July 24, 1924, $10,000.00. When properly indorsed pay to the order of Security National Bank to City National Bank, Wichita Falls, Texas. Wichita Royalty Company, by E. E. Scannell for trustee. "4."

1075

PLAINTIFF'S EXHIBIT 162.

Wichita Royalty Company, Wichita Falls, Texas, No. 237, July 2, 1924. $11,000.00. When properly indorsed pay to the order of Security National Bank to the City National Bank, Wichita Falls, Texas, Wichita Royalty Company, by E. E. Scannell, for trustee. "4"

The Witness:

I do find evidence of ownership through the books and records of the Wichita Royalty Company of that prop-

erty; the ledger of the Wichita Royalty Company says Producing royalties owned on January 27, 1925, shows a credit of $1,796.86, the cash receipt original record of cash received $114.00, dated January 27, 1925, shows part payment on sale of property No. 76, $1,796.86, says received as part payment sale of property No. 76, lots 9 and 10, block 41, J. H. White land, Archer County, Texas. That is the corresponding property that the original voucher memorandum kept by the Wichita Royalty Company shows that the checks were given for, those two lots in the White lands. The ledger on February 17, shows a credit of $538.04, to producing royalties owned, and the original record of cash received, No. 118, on the same day, shows receipt of $538.04, property No. 76, final payment on sale of our interest in lots 9 and 10, block 41, J. H. White land, Archer County, Texas. There is no record showing from whom that money was received; the deposit slip of the Wichita Royalty Company on January 27, shows they came from B. L. Fain.

1076 Mr. Humphrey:

We offer the deposit slips corresponding to the cash receipts, Plaintiff's Exhibit 163 and 164.

PLAINTIFF'S EXHIBIT 163.

City National Bank, deposited by Wichita Royalty, Wichita Falls, Texas, 4-17-25. Checks as follows:

Oil runs	301.02
R. L. M(McM)	26.42
B. L. Fain	538.04
"8" Total	$865.48

PLAINTIFF'S EXHIBIT 164.

City National Bank, deposited by Wichita Royalties, Wichita Falls, Texas, 1-27-1925. Checks as follows:

Oil runs	1371.63
B. L. Fain	1796.86
"8" Total	3168.49

The Witness:

You now hand me a transfer to J. H. White on the 31st of January, 1925, of this property; a certified copy of a transfer from C. W. Murchison to E. R. Fain by E. R. Fain, Attorney-in-fact, Ross Robertson, B. L. Fain, J. I. Staley, conveying to J. H. White, this lease with the oil producing wells on it, dated December 15, 1924, filed December 18, 1924, that assignment covers the same property. Filed for record the 19th of December, 1924, and B. L. Fain, according to the deposit slip, deposited the amount of the proceeds that is reflected by the Wichita Royalty Company books on this property.

1077

Mr. Humphrey:

We offer in evidence this assignment from Murchison and Fain, et al, to J. H. White.

PLAINTIFF'S EXHIBIT 165.

C. W. Murchison, et al, to J. H. White. No. 7753. Assignment (C. W. Murchison, E. R. Fain, B. L. Fain, Ross Robertson, J. I. Staley, and A. W. Ross, attorney in fact for Thomas A. Ross, to J. H. White.)

Consideration $15,000.00 cash.

Conveying 7/8ths of the oil and gas saved and produced and covering the following described tract of land situated in the county of Archer, State of Texas, to-wit:

Lots Nos. 9 and 10, Block No. 41 of the American Tribune New Colony Company subdivision of land, as per map or plat thereof duly recorded in the Clerk's office or Archer County, Texas, to which record reference is hereby made for more accurate description of said lots.

Together with two producing oil wells on said lease, and the following described personal property.

1. Standard rig as the same now is on the lease, dismantled.

1 25 H. P. engine now on well No. 2 with circulating tank.

1 Belt and engine house.

Rod lines and jacks.

1078 2 Wells tubed and cased

4 250 barrel steel tanks

2 500 barrel steel tanks

1 50 barrel gun barrel

Together with such equipment and tools as are now on said lease that belong to same.

Dated December 15, 1924.

Duly acknowledged.

Filed for record December 18, 1924, at 10:00 A. M.

Recorded December 19, 1924, at 11:55 A. M.

Mr. Humphrey:

We offer in evidence the original record of cash received, 114, of the Wichita Royalty Company, dated January 27, 1925, showing the receipt of the sum of $1,796.86, received in part payment of the sale of property No. 76, lots 9 and 10, block 41, J. H. White land, Archer County, Texas.

(Marked "Plaintiff's Exhibit 166.")

PLAINTIFF'S EXHIBIT 166.

Original record of cash received. No. 114. From Pipe Line Cos. Jan. 27, 1925. Account:

Description of Cash Items.

Royalty Income	1371.63
Part payment on sale Prop. No. 76	1796.86
Received in payment of oil runs	1371.63
Received as part payment of Prop. No. 76	1796.86

Lots 9 & 10, blk 41, J. H. White Land, Archer County, Texas. The above listed cash item received by me and passed to R for deposit.

1079 Mr. Humphrey:

Also offer in evidence the original record of cash received, No. 118, showing property No. 76, final payment on sale of our interest, in lots 9 and 10, block 41, J. H. White land, Archer County, Texas, $538.04.

(Marked "Plaintiff's Exhibit 167").

PLAINTIFF'S EXHIBIT 167.

Original Record of Cash Received No. 118

From: ..... Feb. 17, 1925.

Account: .....

Description of Cash Items.

Received in Payment of Oil runs	$301.02
Notes Rec. (R. L. Mathis)	25.00
Interest	1.42
Property No. 76 (Final payment on sale of our interest in lots 9 & 10, B. 41, J. H. White land, Archer County, Texas.	538.04

The above listed cash items received by me and passed to r for Deposit.

1080 Mr. Humphrey:

In connection with the deposit slip and the other deed, and the cash receipts, I also offer in evidence carbon copy in the bound volume of the vouchers, check No. 237 of $11,000.00.

(Marked "Plaintiff's Exhibit 168" as follows:)

PLAINTIFF'S EXHIBIT 168.

To purchase of interest in Lots 9 and 10 block 41 J. H. White lands, Archer County, Texas $11,000.00 Total Cost $21,000.00 July 2, 1924 237 Security National Bank $11,000.00 City Nat. Paid 7-3-24. Ind. Sec. Nat. Bank Dep. to cr of G. W. Peckham.

1081 Mr. Humphrey:

Also offer in evidence the voucher memorandum in the same volume, for check 246, for $10,000.00, both of which show was for the purchase of the interest in lots Nos. 9 and 10, block 41, J. H. White land, Archer County, Texas.

(Marked "Plaintiff's Exhibit 169").

PLAINTIFF'S EXHIBIT 169.

To purchase of interest in Lots 9 and 10 Block 41 J. H. White Land, Archer County, Texas, $10,000.00 246 July 24, 1924, Security National Bank, $10,000.00. City—No indorsement except Sec. Nat'l Clearing House Stamp 7-26-24, Paid 7-24-26.

1082 The Witness:

I do know that it was a custom during that period of time, among oil operators, and people dealing in oil leases where there was more than one interested, for sometimes, one party to hold the property in his name for the benefit of the other parties.

Mr. Rogers:

To all of the evidence, other than the books and records of the royalty company connected with this transaction, objection is made and motion is made to strike the same from the record, because it is apparent that the trustee, G. W. Peckham, caused trust checks to issue in the aggregate sum of $21,000.00, which he personally received and made no accounting therefor, other than causing the books and records to show the trust ownership to the property which he did not have any title to, or memorandum in writing, from whence title could be made, or from which a trust might be impressed upon real estate, causing the trust books to show receipt of oil runs aggregating $2,925.90, as the sale price of the aggregate total of $2,334.90, as the sale price of the aggregate total of $2,334.90; the trust sustaining a substantial loss in the transaction, to the personal benefit of the trustee, even though explained in the manner sought to be explained. There is no record whereby the trust receives anything other than the credits shown as the receipts of oil produced and the sale price thereof, as the trustee caused the trust books to show, as a credit upon the original $21,000.00, which the
1083 trust had theretofore paid the trustee personally. And for such reason, objection is made to such testimony.

(Which objection was by the Court overruled, to which the Defendant, Wichita Royalty Company then and there excepted.)

The Witness:

The next property is 79, the Routan property, check 373 for $2,500.00, payable to G. W. Peckham, indorsed by G.

W. Peckham, signed by E. E. Scannell on Wichita Royalty Company. The voucher shows to purchase of one-sixteenth of the royalty in the Routan land, one hundred and seventeen acres in Archer County, Texas, $2,500.00.

Mr. Humphrey:
We offer the check and the voucher in evidence.

PLAINTIFF'S EXHIBIT 170.

Wichita Royalty Company, Wichita Falls, Texas, No. 373 (in red pencil) Dep. to cr. of GWP 5-5-25 "10" $2,500.00 When properly indorsed pay to the order of G. W. Peckham To the City National Bank, Wichita Falls, Texas, Wichita Royalty Company, by E. E. Scannell for trustee (Indorsed G. W. Peckham) (Perforated) Paid 5-5-25.

Mr. Humphrey:
I ask that the voucher be photostated.

(Marked "Plaintiff's Exhibit 171" as follows:)

1084 PLAINTIFF'S EXHIBIT 171.

Property No. 79 To purchase of 1/16 of the royalty in the Routan Land 117 acres in Archer County, Texas $2,500.00 May 5, 1925, 373 G. W. Peckham 2500.00 (Ind. G. W. Peckham Paid May 5, 1925, Dep. to Cr. of G W P, City.

1085 The Witness:
The deed which you now hand me covers one hundred and seventeen acres of land out of the Isaac Holman League and Labor of land patented to the heirs of Isaac Holman. That is the same tract, and it is dated June 30, 1925. This check was paid 5-5-25. There was not any escrow.

Mr. Humphrey:
We offer the deed in evidence, Plaintiff's Exhibit 172.

PLAINTIFF'S EXHIBIT 172.

Mineral Deed from Geo. B. Ray and J. H. Massie, to Wichita Royalty Company.

Consideration $10.00 cash in hand paid.

Conveying an undivided 1/16th interest in all of the oil and gas and other minerals in and under and that may be produced from the following described land situated in Archer County, Texas, to-wit:

117 acres of land out of the Isaac Holman league and labor of land patented to the heirs of Isaac Holman by virtue of certificate No. 672, being known and described as Block No. 9, of the Crawford Pasture subdivision of said Holman Survey, and described more particularly as follows: Beginning at a point 2805 varas East and 2481 varas South of the N. W. corner of the said Isaac Holman Survey for the N. E. corner of this tract, being also the S. E. Corner of a tract 143-3/4 acres formerly in the name of E. D. Evans; Thence South 945 varas for the S. E. corner; Thence West 700 varas for the S. W. corner; Thence North 945 varas for the N. E. Corner; Thence East 700 varas to the place of Beginning, containing 117 acres of land, more or less;

1086

Together with the right of ingress and egress at all times for the purpose of mining, drilling and exploring said land for oil, gas and other minerals, and removing the same therefrom.

Dated June 30, 1925.

50c documentary stamps.

Duly acknowledged, on the 30th day of June, 1925.

The Witness:

That $2,500.00 was deposited to the credit of George Peckham on May 5, 1925, individually, and the check was debited against the deposit account of the Wichita Royalty Company. On the same day George Peckham received credit for $2,500.00, he gave his check for $2,500.00 payable to Ray and Massie signed G. W. Peckham and charged to the individual account of G. W. Peckham in the City National Bank. His check is deposited to the credit of Ray and Massie, and is the check I have shown dated 5-5-25. The check bears G. W. Peckham's genuine signature. It was deposited in the Security National Bank, where Ray and Massie carried their account.

Mr. Humphrey:

We offer the check in evidence.

PLAINTIFF'S EXHIBIT 173.

City National Bank Check No. . . . . Wichita Falls, Texas 5-5-25 $2500.00 Pay to the order of Ray & Massie 1/12 int in deal with Allen Mooers Routan Land. Indorsed Dept. to credit of Ray & Massie (Perforated) Paid 5-6-25.

1087 The Witness:

The next one is for $11,000.00, checks Nos. 385 and 387, for $6,000.00 and $5,000.00, property No. 80.

Mr. Rogers:

Having now inspected Plaintiff's Exhibit 173, to which I started to object a minute ago, and having now read the notation thereon, which is as follows, "One-half interest in deal with Allen Mooers-Routan land," it is apparent that the item is not in payment of the interest conveyed by George B. Ray and J. H. Massie, under Plaintiff's Exhibit 172, which was one-sixteenth, unless it be that G. W. Peckham, as an individual, had traded with Ray and Massie for a half interest in this land, and caused

one-sixteenth interest to be conveyed to his trust and retain himself the difference, receiving full consideration personally from the trust which he directed, depositing the total amount thereof to his personal account, and paying therefrom to George C. Ray and Massie, the amount so received from the trust in full payment of his personal interest in that, of the royalty, the transaction can mean no more than that, and if it does not mean that, the transaction is not identified by the check, nor is the check shown to be in payment of any interest described in Plaintiff's Exhibit 172. We object to it for those reasons, both the checks and the deed, being Plaintiff's Exhibits 172 and 173, and move that they be stricken.

The Witness:

As to check No. 385 of $6,000.00, the voucher record shows original typing for 1/16th of royalty on
1088 block 21, East twenty-five acres, north sixty acres, west one hundred acres, block 19, east sixty acres, west one hundred and sixty acres block 19. South sixty acres, west eighty acres, block 22, J. L. Anderson South Pasture Subdivision, Archer County, Texas. One-eighth of royalty on southwest quarter of northwest quarter of section 2, J. Pointevant Survey, Young County, Texas, 215 acres in J. L. Anderson subdivision known as Norday district, 20 acres, and the Pointevant Survey Young County, $6,000.00.

The voucher on 387 for $5,000.00 dated June 29, 1925 shows 1/16 of royalty on all of block 21, and the east twenty-five acres, north sixty acres, west one hundred acres, block 19; east sixty acres west one hundred and sixty acres block 19; and south sixty acres, west eighty acres of block 22, J. L. Anderson south pasture subdivision Archer County, Texas; one-eighth of royalty on west half of southwest quarter of the northwest quarter of section No. 2, J. Pointevant Survey, Young County, Texas, the property is carried on the books of the royalty company as No. 80.

These deeds you exhibit to me, one of them covers forty acres in the south pasture—both of them in the south pasture.

Mr. Humphrey:

We offer the deeds in evidence, Plaintiff's Exhibits 174 and 175.

PLAINTIFF'S EXHIBIT 174.

Mineral deed. George W. Peckham to Wichita Royalty Company.

Consideration $10.00 cash.

1089 Conveying an undivided 1/16th interest in and to all the oil, gas and other minerals in and under and that may be produced from the following described land situated in Archer County, Texas, to-wit:

The South thirty-two (32) acres of block 21 of the south Anderson Ranch lands as shown by map or plat of record in the office of the County Clerk of said County. The south sixty acres of the west eighty acres of block No. 22, Anderson South pasture subdivision. The north twenty five acres of the east fifty acres of the west one hundred acres, block 19, Anderson south pasture. The East sixty acres of the West one hundred sixty acres of Block No. 19, Anderson South Pasture Subdivision.

$8.00 documentary stamps.

Together with the right of ingress and egress at all times for the purpose of mining, drilling and exploring said land for oil, gas and other minerals, and removing the same therefrom.

Said land being now under an oil and gas lease executed in favor of Empire 32 acres, Cullum 60 acres, Prairie Oil & Gas Co. 40 acres, Weldon 25 acres, Constantin 20 ac. it is understood and agreed that this sale is made subject to the terms of said lease, but covers and includes 1/16 of all of the oil royalty, and gas rental of royalty due and to be paid under the terms of said lease.

Dated July 1, 1925.

1090 Duly acknowledged.

Filed for record September 28, 1925. Recorded October 9, 1925, at 11:00 o'clock A. M. in the records of the said county, Volume 106, page 499.

PLAINTIFF'S EXHIBIT 175.

Mineral deed. G. W. Peckham to Wichita Royalty Company.

Consideration $10.00.

Conveying an undivided 1/16 interest in and to all of the oil and gas and other minerals in and under, and that may be produced from the following described land situated in Archer County, Texas, to-wit:

The North 40 acres of Block No. 21, of Anderson Subdivision of his south pasture as per plat of record in the records of Archer County, Texas.

$2.00 Documentary stamp, canceled.

Together with the right of ingress and egress at all times for the purpose of mining, drilling and exploring said land for oil, gas and other minerals, and removing the same therefrom.

Said land being now under an oil and gas lease executed in favor of The Norday Oil Company, it is understood and agreed that this sale is made subject to the terms of said lease, but covers and includes 1/16 of all of the oil royalty, and gas rental of royalty due and to be paid under the terms of said lease.

Dated July 20, 1925.

Duly acknowledged.

1091 Filed for record September 23, 1925, at 8:00 o'clock A. M. recorded October 2, 1925, at 11:00 A. M. in the records of said county, volume 105 page 495.

The Witness:

$10.00 revenue stamps were placed on those deeds, which would indicate a consideration of $10,000.00. That does not include the Pointevant survey in Young County. Both of those checks were indorsed by G. W. Peckham, they were handled by teller No. 7 on the $5,000.00 one and teller No. 8 on the $6,000.00 one.

Mr. Humphrey:

We offer the deposit slips in evidence.

PLAINTIFF'S EXHIBIT 176.

City National Bank Deposited by G. W. Peckham Wichita Falls, Texas, 6-24-1925 Checks as follows: "8" Total 6,000.00.

PLAINTIFF'S EXHIBIT 177.

City National Bank Deposited by G. W. Peckham Wichita Falls, Texas, 6-29-1925 Checks as follows:

R	5,000.00
"7"	500.00
Total	$5,500.00

The Witness:

As to the accounting made of those two checks by George Peckham: On June 25, 1925, G. W. Peckham issued his check drawn on the Scurity National
1092 Bank, Wichita Falls, payable to Murchison and Fain Oil Company for $9,493.75, it says, on the notation in the corner, "For 1/16th royalty interest in 217 acres in blocks 19-21-22, South Anderson Ranch." That check indorsed "Deposit only, Murchison and Fain Oil Company by B. C. Ackerman."

Mr. Humphrey:

In connection with that check, I offer in evidence also the voucher memorandum and the check of the Wichita Royalty Company, No. 385.

PLAINTIFF'S EXHIBIT 178.

Wichita Falls, Texas June 25, 1925 No. .... "6" The Security National Bank of Wichita Falls Pay to the order of Murchison & Fain Oil Company $9,493.75 For 1/16 roy. int in 217 ac. (Signed) G. W. Peckham in blocks 19-21-22 South Anderson Ranch. (Indorsed) Deposit only Murchison & Fain Oil Company by B. C. Ackerman (Perforated) Paid 6).

Mr. Humphrey:

We also offer in evidence Plaintiff's Exhibit No. 179.

(Marked "Plaintiff's Exhibit 179" as follows:)

1093 PLAINTIFF'S EXHIBIT 179.

1/16 of Royalty on all Block 21 East 25 acres North 50 acres of West 100 acres Block 19; East 60 acres West 160 acres Block 19 South 60 acres of West 80 acres Block 22 J. L. Anderson South Pasture Sub-Division Racher Coun-

ty, Texas. 1/8 of royalty on west half of southwest Quarter of the Northwest quarter of Section No. 2 J. Pointevent Survey Young County, Texas. 6000.00, 217 Acres in the J. L. Anderson Sub-Div. known as Norday District 20 acres in the Pointevent Survey, Young County, Texas. See 387 $5000, 385, June 24, 1925, G. W. Peckham, 6000.00 City Nat'l, G. W. Peckham Paid 6-25-25, Dep. to cr of G W P.

1094 Mr. Humphrey:

Also Plaintiff's Exhibit 180, as follows:

(Marked "Plaintiff's Exhibit 180" as follows:)

PLAINTIFF'S EXHIBIT 180.

1/16 of royalty on all of Block 21; and the East 25 acres North 50 acres of West 100 acres Block 19; East 60 acres West 60 acres Block 19; and the South 60 acres of west 80 acres Block 22 J. L. Anderson Pasture Sub-Division Archer County, Texas. 1/8 of royalty on West half of Southwest Quarter of the Northwest Quarter of Section No. 2 J. Poitevent Survey Young County, Texas See No. 385 $6,000.00, $5,000.00, June 29, 1925, 387, G. W. Peckham $5,000.00 City End. G. W. Peckham Paid 6-29-25, Dep to Cr of G W P.

1095 The Witness:

Other instruments showing further payments on this account, escrow agreement signed by G. W. Peckham and G. W. Vernon and wife, cover the royalty deed to twenty acres of land out of the J. Pointevant survey No. 2, is that the properties described in the vouchers accompanying these checks of $11,000.00. I got this escrow agreement from Olney, First National Bank. This escrow was the City National Bank of Olney and the First National Bank of Olney, and the City National Bank of Olney consolidated and that was in their files. It

shows that G. W. Peckham gave his check to the City National Bank of Olney for $1,997.00 and his deposit slip to the escrow fund of $1,000.00 by G. W. Peckham and G. W. Vernon contract. Consideration is $3,000.00 instead of $1,000.00 in the escrow agreement.

Mr. Humphrey:

We now offer in evidence the deposit slip, escrow contract between G. W. Vernon and Della Vernon and G. W. Peckham showing the mineral deed received by G. W. Peckham and the receipt of the escrow moneys.

PLAINTIFF'S EXHIBIT 181.

The City National Bank of Olney Deposit ticket, Olney, Texas. 6-23-1925 Credit Escrow fund Checks as follows: W. Falls 1000.00, G. W. Peckham and G. W. Vernon, contract, WDCO. (Closed.)

1096 PLAINTIFF'S EXHIBIT 182.

The State of Texas,
County of Young.

G. W. Vernon and wife Della Vernon hereinafter called the grantors have this day executed in favor of G. W. Peckham hereinafter called the grantee, a royalty deed covering 20 acres of land out of J. Pointevent Survey No. 2 in Young County, Texas, for which deed the grantee is to pay cash consideration of $3,000.00, of which amount the sum of $1,000.00 together with the deed and a copy of this escrow agreement are to be deposited in the City National Bank of Olney, Texas.

It is agreed that the grantor shall furnish for examination only within three days from date hereof a complete abstract of title certified down to date showing good and merchantable title to said land; that said grantee is then

allowed a period of three days in which to have same examined and either accept the title or point out to the grantor in writing any objections that may have been found. If objections are found to said title the grantor is to make effort to cure or correct same and a period of ten days is allowed for making such corrections. In case the objections are of such a nature that it is impossible to correct same in the time allowed then said escrow bank shall deliver the deed to the grantor and the money deposited to the grantee, provided that the grantee shall have the option to waive the objections and accept the title. If or when title is found good and merchantable the grantee will at once deposit in said bank the remainder of the cash payment, then the deed shall be delivered by said bank to the grantee and the money deposited to the grantor.

1097 In case the grantee shall fail or refuse to comply with this agreement as to having title examined or as to making the cash payment, then said escrow bank is instructed and requested to deliver the lease to the grantor and the money deposited with this agreement shall be taken and accepted by the grantor as a forfeit and as liquidated damages.

Signed in triplicate originals this the 22nd day of June, A. D. 1925.

(Signed) G. W. VERNON,
DELLA VERNON,
J. W. RECKLMAN,
By ?
Agent.

M/D received G. W. Peckham.

Release escrow money (Stamped Jun. 29, 1925. (On top in pencil) Get Peckham's ck of 6/29/25, 1997.00.

Mr. Rogers:

We object to the contract and the deposit slip, because the Wichita Royalty Company is not a party to it, nor did the Wichita Royalty Company thereby, or in any other manner, receive any title to the interests therein described. No deed of conveyance or any memorandum in writing signed by G. W. Peckham being offered in evidence, or shown to exist, whereby that the trust obtained any title thereto, even though such title would have, if so acquired, been voidable, and the trust having
1098 elected to rescind and repudiate such voidable transaction, had there been one; there is no evidence to show that the trust is a party to this instrument, other than the books and records which the trustee caused to be kept under his supervision, but carefully avoided the signing of any instrument in writing whereby his estate could be bound thereby. And further, because though the notation is made that escrow money was received, yet no deed thereunder, even to Peckham is shown to exist, nor that he obtained title thereunder. Nor any other matters, other than what might be the facts that the trade was voluntarily rescinded and canceled between the parties, and it is thus not shown that G. W. Peckham himself received any title under this instrument or otherwise, in and to the twenty acres which he caused the trust books to reflect that he was selling to it.

(Which objection was by the Court overruled, to which the Defendant, Wichita Royalty Company, then and there excepted.)

The Witness:

There was a deed from Vernon and wife to G. W. Peckham, of record covering a one-fourth interest
1099 in this twenty acres, volume 111, page 253, Deed Records of Young County, Texas.

Mr. Rogers:

No technical objection will be made to counsel's offering the copy of such deed if found to exist. The specific

objection is made that under counsel's statement that he recorded the deed, conveys to G. W. Peckham one-fourth interest the trustee caused the trust book to reflect a sale to the trust, or a half interest of such sale so acquired by him, which is another, and an added reason why the trust could not be bound by the act of the trustee in acquiring from the Vernon's one fourth interest conveying one-half thereof, to the trust and retaining a free ride upon the remaining half.

The Witness:

I do not have a copy, except reference to a deed, there is a deed of record covering one-fourth interest in the royalty to Peckham. It shows that Peckham paid $3,000.00 for the one-fourth interest. My investigation shows that Peckham expended, of this, $11,000.00, $11,490.75. Other evidences of expenditure of this money besides the check of $1,000.00 is a check on the City National Bank by G. W. Peckham payable to the order of the City National Bank at Olney, for $1,997.00. It is the Vernon Royalty, the notation on the corner to that effect.

Mr. Humphrey:

We offer the check in evidence, Plaintiff's Exhibit 183.

1100 PLAINTIFF'S EXHIBIT 183.

Farmers State Bank, Olney, Texas Jun. 29, 1925 Pay to the order of City National Bank Olney $1997.00 (In Pencil) Vernon Royalty Customers Draft Value received and charge to account of City National Bank, Wichita Falls. (Signed) G. W. Peckham (Perforated) Paid 7-2-1925.

The Witness:

The date of the mineral deed from Vernon to Peckham is June 22, 1925, filed for record July 1, 1925. The records show the expenditure of the $11,000.00 as follows, the check for $1,997.00 and escrow fund for $1,000.00

plus this $9,493.75, aggregating $12,490.75, consisting of Murchison & Fain's checks for $9,493.75. That was given on property No. 80, which is the South Anderson Ranch property, 217 acres. Check given to the City National Bank of Olney for $1,997.00 to the purchase of Vernon Royalty, and his deposit to the escrow fund on June 23, 1925 of $1,000.00. I do not have Mr. Peckham's check showing he paid $1,000.00. I identify that, it was a deposit on June 23, 1925, and dated the date of the escrow June 22, 1925, and the date of the check was June 29, for $1,997.00. The Vernon Royalty that we are talking about here is named for the man who signed the deed. It is out of the Young County property and is not to be confused with the Stephens Royalty in south Vernon. This $1,997.00 less $3.00 revenue stamps would aggregate the $3,000.00 purchase price of the Pointevant royalty sold by Vernon to Peckham. I do not have any data on that item.

1101 The voucher notation on check No. 598 shows, purchase oil runs to apply on purchase of $4,200.00 oil runs due from the Roxana on the Milner, Wilbarger County, Texas, price $3,000.00. This check $500.00.

The next voucher, 602, purchase of oil runs to apply on purchase of $4,200.00 in oil runs due from Roxana Petroleum Corporation on C. J. Milner lands, Wilbarger County, Texas, purchase price $3,000.00. This check for $1,000.00.

No. 607, voucher, purchase oil runs to apply on purchase of $4,200.00 in oil runs due from Roxana Petroleum Corporation on C. J. Milner land, Wilbarger County, Texas, purchase price $3,000.00.

Voucher 610, purchase of oil runs to apply on purchase of $4,200.00 oil runs due from Roxana Petroleum Corporation, J. T. Milner land, Wilbarger County, Texas; purchase price $3,000.00, this check $1,000.00.

All of the checks, except 598, were indorsed by B. L. Fain and G. W. Peckham and deposited to Mr. Peckham's personal account. Check No. 598 was indorsed B. L. Fain, and evidently deposited by him in the Security

National Bank, Wichita Falls, Texas, for $500.00. It was not deposited in the City National Bank. I do not say that it is the genuine signature of B. L. Fain on the last three checks, it purports to be his indorsement. It is the genuine indorsement of George Peckham on the back of the check and it is not the genuine indorsement of B. L. Fain, in my judgment. I believe George Peckham made both indorsements. George Peckham and
1102 B. L. Fain were good friends and partners in several transactions.

As to the disposition George Peckham made of the funds that were deposited to his credit; On April 22, 1927, I have a check payable to B. L. Fain for $1,000.00, signed G. W. Peckham and indorsed B. L. Fain and cleared by the Security National Bank on April 23, 1927, paid by the City National Bank on April 23, 1927. That bears the genuine indorsement of B. L. Fain.

Mr. Humphrey:

We offer the check in evidence, and the rest of the checks, four in all, marked Plaintiff's Exhibits 184, 185, 186, 187, 188 and 189:

PLAINTIFF'S EXHIBIT 184.

Wichita Royalty Company, Wichita Falls, Texas, No. 602. April 23, 1927 (in red pencil) Dep. to cr. GWP 4-23-27. When properly indorsed pay to the order of B. L. Fain $1,000.00. To the City National Bank, Wichita Falls, Texas. Wichita Royalty Company, by E. E. Scannell for trustee. "7" Indorsed B. L. Fain, G. W. Peckham. Perforated Paid 4-23-27.

PLAINTIFF'S EXHIBIT 185.

Wichita Royalty Company, Wichita Falls, Texas, No. 607. (In red pencil) Dep to cr. GWP 5-6-27, May 6, 1927. When properly indorsed pay to the order of B. L. Fain

$500.00. To the City National Bank, Wichita Falls, Texas. Wichita Royalty Company, by E. E. Scannell, for trustee. (Perforated) Paid 5-6-27. "7" Indorsed B. L. Fain, G. W. Peckham.

1103 PLAINTIFF'S EXHIBIT 186.

Wichita Royalty Company, Wichita Falls, Texas, No. 610 (in red pencil) Dep. to Cr. GWP 5-16-27, May 16, 1927. When properly indorsed pay to the order of B. L. Fain $1,000.00. To the City National Bank, Wichita Falls, Texas. Wichita Royalty Company, by E. E. Scannell for trustee. "7" (Indorsed) B. L. Fain, G. W. Peckham.

PLAINTIFF'S EXHIBIT 187.

Wichita Royalty Company, Wichita Falls, Texas, No. 598. April 11, 1927. Pay to the order of B. L. Fain $500.00. To the City National Bank, Wichita Falls, Texas. Wichita Royalty Company, by E. E. Scannell for trustee. Indorsed B. L. Fain, G. W. Peckham. Perforated Paid 5-16-27.

PLAINTIFF'S EXHIBIT 188.

Wichita Falls, Texas, Texas 4-22-1927, No. ..... "2" The City National Bank of Wichita Falls. Pay to the order of B. L. Fain $1,000.00. (Signed) G. W. Peckham. Indorsed B. L. Fain. "3" Perforated Paid 4-23-27.

PLAINTIFF'S EXHIBIT 189.

Wichita Royalty Company, Wichita Falls, Texas, No. 317 (in red pencil) Dep. to cr. GWP 12-23-24. "6" When

properly indorsed pay to the order of G. W. Peckham $695.00. To City National Bank, Wichita Falls. Wichita Royalty Company, by E. E. Scannell, for trustee. Indorsed G. W. Peckham. Perforated Paid 12-23-24.

1104 The Witness:

The records show that the Wichita Royalty Company had an assignment to this property. Voucher notation record, No. 611, dated May 18, 1927, Wilbarger County, Clerk, $1.00. It says, "Recording fees, Recording assignment oil debt on Roxana Milner, $1.00." I find among the records of the Wichita Royalty Company an assignment to that property, it is Defendant's Exhibit 44, already offered in evidence. It shows a conveyance of this Milner—this oil payment on the Milner property. The records of the Wichita Royalty Company show a payment made to it from this oil payment.

In paragraph 80 of the cross complainant's bill of complaint, wherein he charges the sum of $2,400.00 was issued by check of Wichita Royalty Company and deposited to Mr. Peckham's account, that is the same check as No. 650, that I have heretofore testified about and explained.

Check No. 317, the voucher on that shows, to purchase 1/16th of 1/8th royalty in 125 acres known as block 46 of the Mead L. M. pasture subdivision of the D. G. Thomas Survey, abstracts 458, Archer County, Texas, $695.00.

The deed which you now hand me from F. O. Harrell to G. W. Peckham trustee for the Wichita Royalty Company, the description of the land corresponds to the interest conveyed with the notation on the voucher.

Mr. Humphrey:

We offer the deed and the check in evidence.

(Plaintiff's Exhibit 189 heretofore copied in this record.)

1105 PLAINTIFF'S EXHIBIT 190.

Mineral Deed. F. O. Harrell to G. W. Peckham, trustee for Wichita Royalty Company.

Consideration $10.00.

Conveying an undivided 1/128 interest in and to all of the oil and gas and other minerals in and under and that may be produced from the following described land situated in Archer County, Texas.

125 acres known as block #46 of the Meade L. M. Pasture Subdivision of the D. G. Thomas Survey, Abstract 458. The above described 1/128 interest is meant to be 1/16 of the 1/18 royalty reserved by the lessor under leases thereon as hereinafter referred to.

$1.00 documentary stamp, canceled.

Together with the right of ingress and egress at all times for the purpose of mining, drilling and exploring said land for oil, gas and other minerals, and removing the same therefrom.

Said land being now under an oil and gas lease executed in favor of G. I. Dorrance & Hobbs Chenault & Burleson, it is understood and agreed that this sale is made subject to the terms of said lease, but covers and includes 1/16 of all of the oil royalty, and gas rental of royalty due and to be paid under the terms of said lease.

Dated December 16, 1924.

Duly acknowledged.

Filed for record on the 24th day of December, 1924, at 3:00 o'clock P. M.

1106 Recorded December 27, 1924, at 11:30 P. M. in the deed records of said county, Volume 93, page 556.

The Witness:

The check bears the genuine indorsement of Mr. Peckham, he received credit for $695.00, and I have the deposit slip, which shows that the money was deposited to the credit of G. W. Peckham.

Mr. Humphrey:

We offer the deposit slip in evidence, Plaintiff's Exhibit 191.

PLAINTIFF'S EXHIBIT 191.

City National Bank. Deposited by G. W. Peckham, Wichita Falls, Texas, 12-23-1924. Checks as follows:

"6"	695.00
	7.37
	702.37

The Witness:

I have investigated and identified the payment of the identical fund corresponding to that. On the same day G. W. Peckham received credit for this $695.00, which was December 23, 1924, he gave F. O. Harrell a check for $4,000.00. He had various dealings and paid Mr. Harrell various amounts of money, his transactions with Mr. Harrell along about that time were considerable. Several thousand dollars in dealings between them. I have not been able to identify the identical transaction where he paid F. O. Harrell the identical sum of money represented by this check, unless it is covered
1107 by this $4,000.00 payment to Harrell. F. O. Harrell lives in Oklahoma City.

Mr. Rogers:

At this time we wish to offer in evidence DEFENDANT'S EXHIBIT 123, as follows:

Being a contract between G. W. Peckham and Wichita Royalty Company, dated March 12, 1923, whereby G. W. Peckham sold and the Wichita Royalty Company bought 3/128ths royalty interest in the J. E. Dowdle Survey, Young County, Texas, for a recited consideration of $2,500.00 cash, the receipt of which was acknowledged; $2,500.00 thirty days from date, $2,500.00 sixty days from date; interest at eight percent on deferred payments. Oil runs from date to be applied as credit on final payment, and was placed in the First National Bank in escrow. On the margin of the contract bears this indorsement, "5-15-23 all provisions herein complied with, oil and gas grant delivered to G. W. Peckham. (Signed) G. W. Peckham. Wichita Royalty Co. by G. W. Peckham."

1108 The Witness:

My testimony heretofore given is based upon weeks and months of investigation and survey of the various records and books of the interested parties to this transaction. We have had to dig a lot of the records out of the files of the bank for the past thirteen years, we have had to travel over the biggest part of Texas gathering up other information, we have examined copies and photostatic copies of the books of the Wichita Royalty Company, and checked the records of the various county clerks' offices, also other banks' records where it was possible to do so, also Mr. Peckham's checks and records, such as he had. As well as the Marlborough Addition and the Texas Investment Company. The Wichita Royalty Company gave us access to such books as they had, except the ones that were lost, and the stockholders ledgers. I have examined the liability ledger and the deposit ledger in the City National Bank of the various parties, Mr. Harrell and Mr. Peckham, and

the original deposit slips which covered the period from 1923 up to date. I had Mr. Lambert to assist me in this investigation and he is a Certified Public Accountant. During this period of time covered by these investigations, I have determined how much money was deposited to the individual account of Mr. George W. Peckham in the City National Bank, from January 1, 1923 to November 6, 1929, it is $1,608,999.13. On the day of his death, George Peckham had on deposit to his personal credit $615.31. There were one thousand and ten items that made up the total deposit of $1,608,999.13. Forty-six of those items, from 1923 to 1929, came as a result of transfers of deposits, traceable as a loan from the funds of the Wichita Royalty Company. Excluding his salary checks, eleven percent of the funds deposited to his individual account during this period of time came from the account of the Wichita Royalty Company, or were represented by funds that I could trace as funds of that company—I refer to the royalty purchased that never went into the Royalty Company account. I have the percent by years as well as the items by years. Three percent in items, in 1923, of the total funds deposited in that year, came from the account of the Wichita Royalty Company, and four percent in amount. Two percent of the items and nine percent of the funds in 1924. Two percent of the items and four percent of the funds in 1925. Twenty percent of the items and forty percent of the funds in 1926. Twelve percent of the items and sixteen percent of the funds in 1927. Three percent of the items and three percent of the funds in 1928. In 1929, there were no transfers.

1109

I will give briefly the operation of a commercial bank: the deposit accounts are handled by paying and receiving tellers who take in the deposits and pay out the money as checks are presented to them for payment at the window, for cash. The bookkeeping department is handled by a group of bookkeepers with one man in charge of the department. Of course, checks are cleared

on the bank from all parts of the United States, mail coming in from every source everywhere. The majority of the items come through the Federal Re-
1110 serve Bank and the larger banks of Dallas, Houston, Fort Worth, Oklahoma City, St. Louis and Kansas City, and items come in from New York and San Francisco and Los Angeles, these come in daily. They are proven as they come in. From those various Banks, to show that their totals are correct, and they are assorted to the different bookkeepers. The checks that come in through the local banks are checked every morning at a certain time, and they are sorted and given to the bookkeeper. The checks, the tellers handle through their cages during the day, are run to the bookkeeping department and given to the various bookkeepers who line the checks up and post them to the individual account on which they are drawn, together with any deposits that might be made. The checks are then turned over to a file clerk and canceled and filed away. At the end of the month they are made up, together with the statement, and they are delivered to the person, or the person calls for the statement. The note department is on the opposite side of the bank from the paying and receiving tellers, they handle the note department. They receive the payment on the notes and they run out the credits for loans that have been made. The bookkeeper in the note department is in that department at all times, and in no way has anything to do with the keeping of the books on the other side of the house. That is all he does, is to take care of the liability ledger of the note and discount department. The teller, either paying or receiving, when he re-
ceives a deposit, does not check the liability
1111 of the depositor, to see what he owes the bank, it is not his duty to do so. His specific duty is to take in the deposits and pay the funds out for checks presented to him for cash at that window. Upon the genuine signature of the parties authorized to draw them. During this period of time the Wichita

Royalty Company also transacted business with the bank. I have not figured up its account with the bank during that period, but it was an active depositor and customer of the bank. During this period of time it carried a substantial balance with the bank, it was fairly active. There was nobody else, so far as I know, except Mr. Peckham and Mr. Scannell, who had charge of the Wichita Royalty Company office. I never knew any of the stockholders of that company except those two men. Mr. Scannell and Mr. Peckham were authorized representatives of the Wichita Royalty Company who drew checks against the account of the company.

As to how many checks were handled by the City National Bank during this period of time, would be a guess, because I have handled thousands of items each day, through the bookkeeping department and the teller. The paying of checks and the receiving of money by the tellers, is in the nature of a rather rapid transaction. The executive officers of the bank do not have anything to do with the taking in of the money as a general rule, or the paying out of it, that is a duty delegated to the employees known as the tellers.

Most of the time from 1923 up until the death of Mr. Peckham the Wichita Royalty Company
1112 was a borrower from the City National Bank. Those loans were made by the Wichita Royalty Company upon comparatively short periods of times, renewals, etc., the customary date of a renewal or extension of a note was sixty to ninety days. Ten days prior to the maturity of the note or loan the discount department would send a notice to the Royalty Company that their note would be due on a certain date, and that amount would be stated on the notice. That was a universal rule of the bank, to send such notices at the maturity of the note, which notice showed the amount of the note that was due, when due, it is a printed form, and the name of the borrower is typed in and their address and the date due and the amount. From 1923 up until the death of Mr. Peckham, I would

say that those notices were duly sent to the Wichita Royalty Company at the maturity of its notes. I was in the note department a portion of that time.

Cross Examination.

By Mr. Rogers:

In giving the result of my tabulation of items transferred from the Royalty Company's account to Mr. Peckham's personal account, I excluded four or five hundred dollar payments monthly received by Mr. Peckham, which he caused the trust books to show in payment of executive salaries. The salary checks were cashed and most of them deposited to his personal account.

I have now examined a group of checks issued by the Wichita Royalty Company, against the deposit
1113 account in the City National Bank, payable to the order of G. W. Peckham, being 71 in number. Each of such checks were charged against the Royalty Company's deposit to the bank and credited by deposits to the account of G. W. Peckham with the bank.

Mr. Humphrey:

I am informed that all of these are salary checks. We might agree that the voucher notations on each one of these checks showed that they were for the salary of George Peckham trustee.

Mr. Rogers:

It is so agreed and we will want the dates and the amount of each transfer.

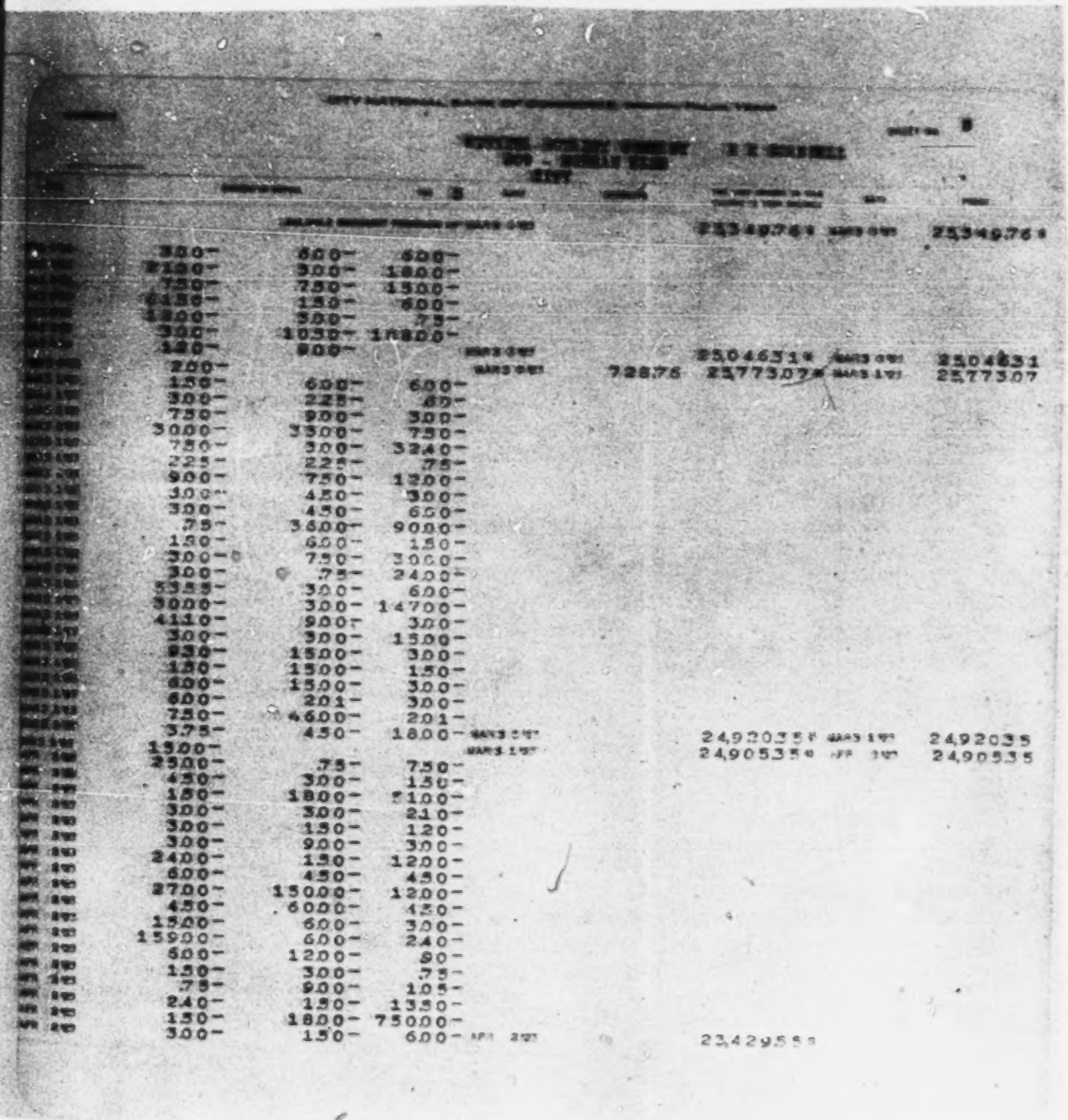
The Witness:

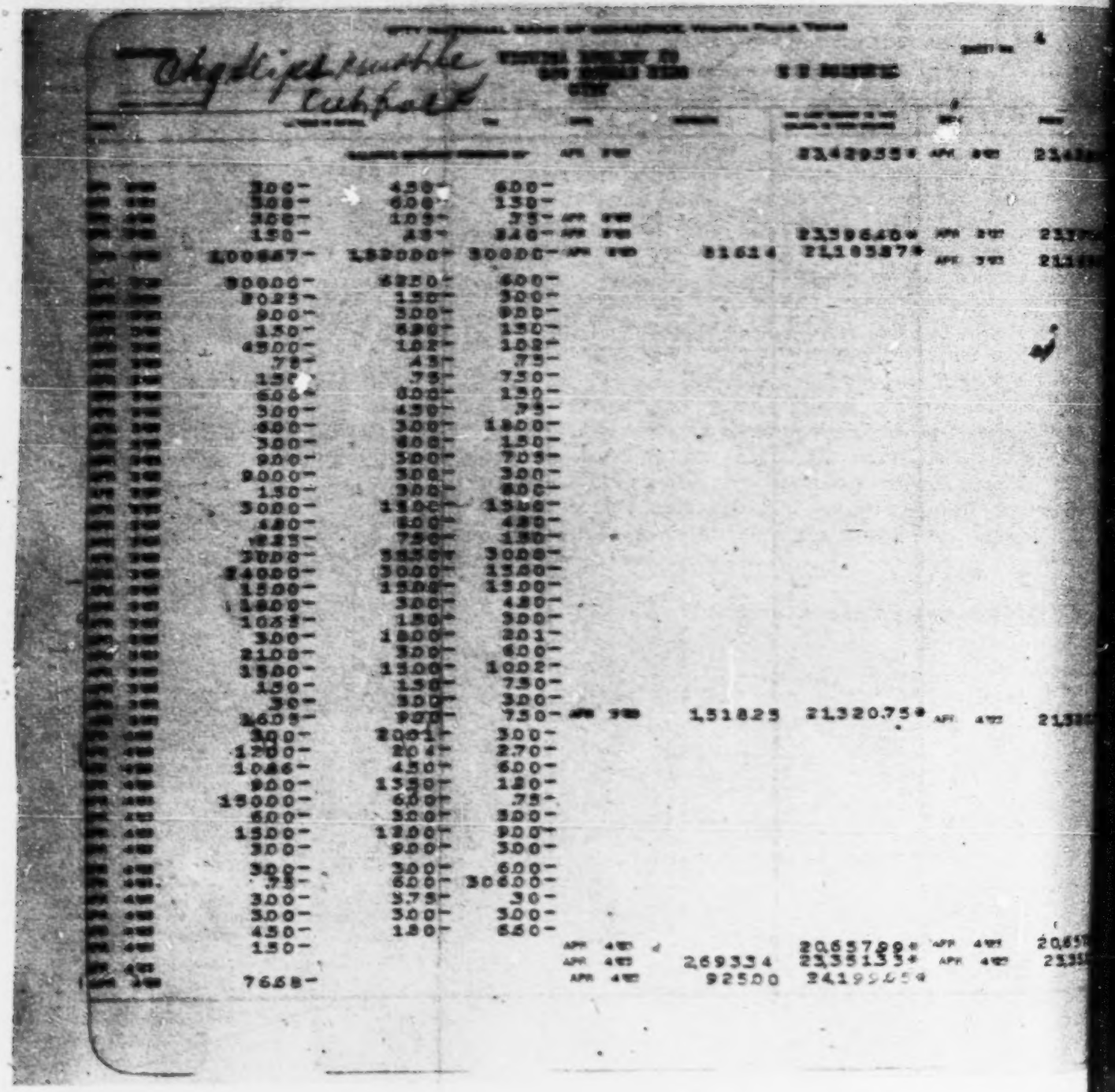
The aggregate total of such items drawn on the City National Bank is $30,100.00, deposited to the personal account of G. W. Peckham with the bank.

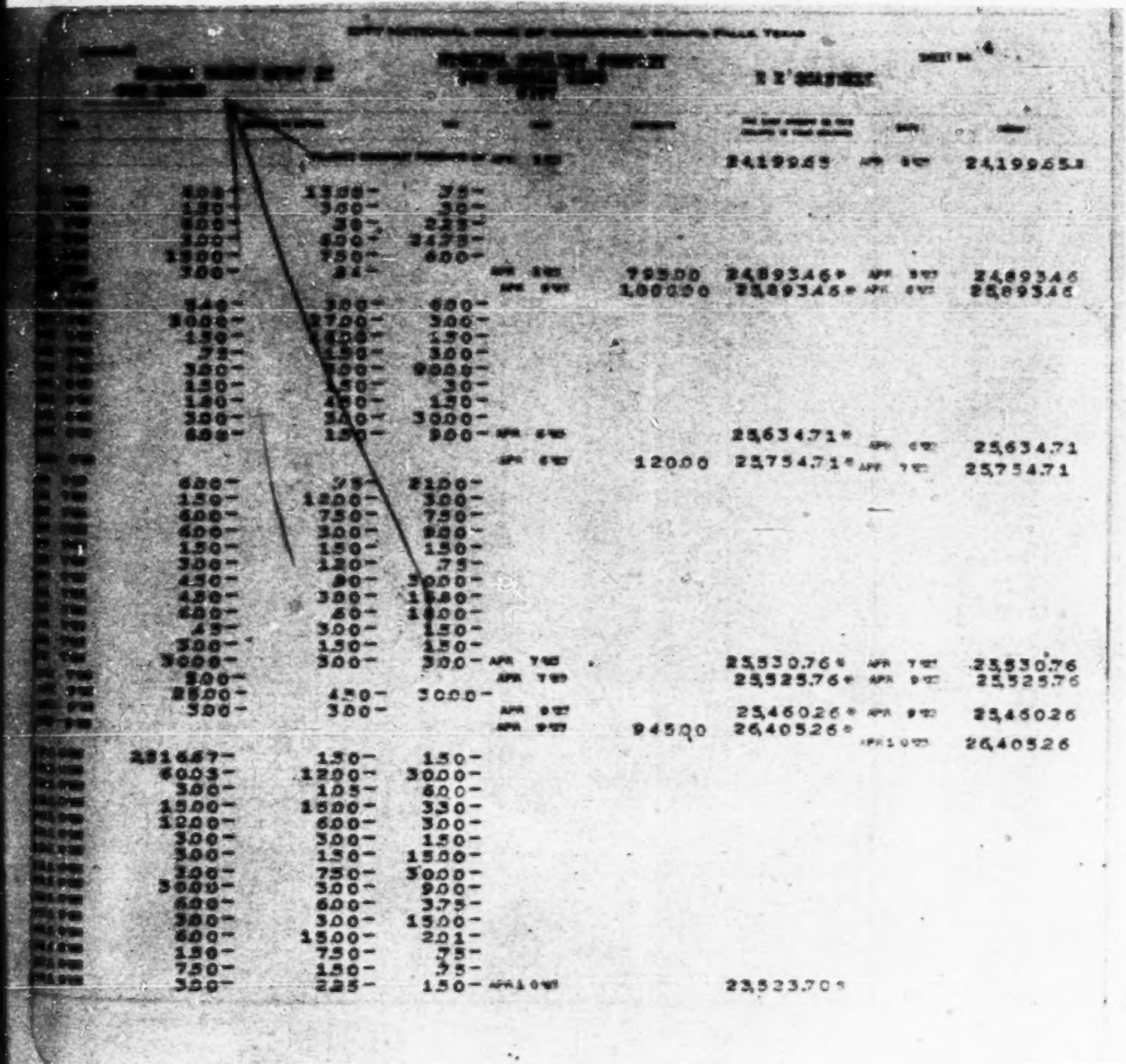
The source of $400.00 deposited to the personal account of G. W. Peckham on May 8, 1926, is currency. And the check of the Security National Bank for $600.00, on the same day, May 8, 1926, to cash, a check out of the Security National Bank for $400.00, canceled on the same day at that bank, was not run through the City National Bank. On that day he deposited $400.00 in currency in the City National Bank, together with a check for $600.00, drawn on the Security National Bank—I could not tell you who it was drawn on. Check No. 497 payable to G. W. Peckham, Wichita Royalty Company checks, $400.00, May 5, 1926, my information is that that check was cashed. He cashed this check, Wichita Royalty Company, on May 5, 1926, at
1114 the City National Bank, and on May ?, 1926, he cashed a check at the Security National Bank. I now hand to you the bank records including these items, Wichita Royalty Company deposit records from April 1, 1923 to the date of its closing, and its liability records beginning at the same date, to the present time.

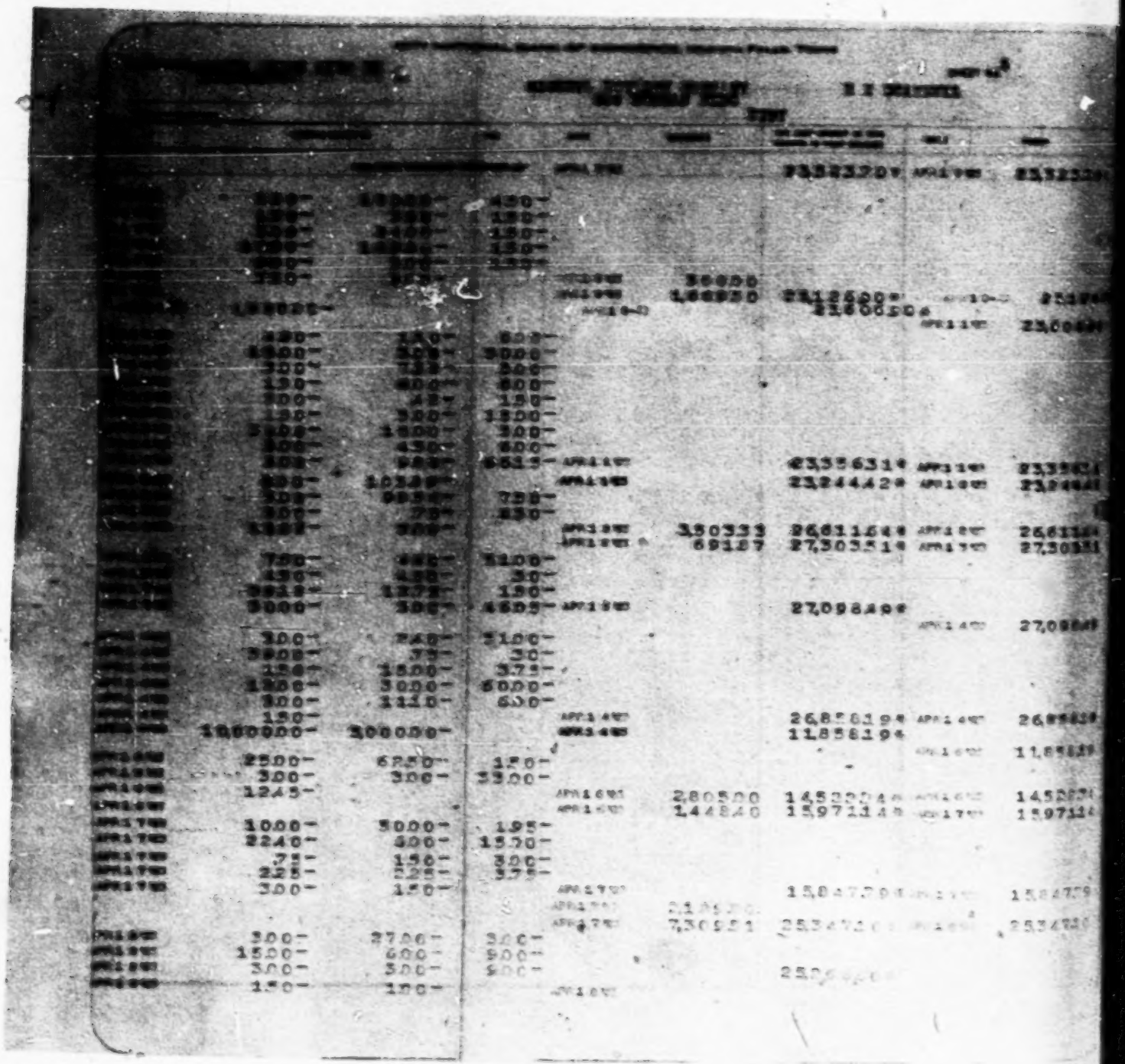
Mr. Rogers:

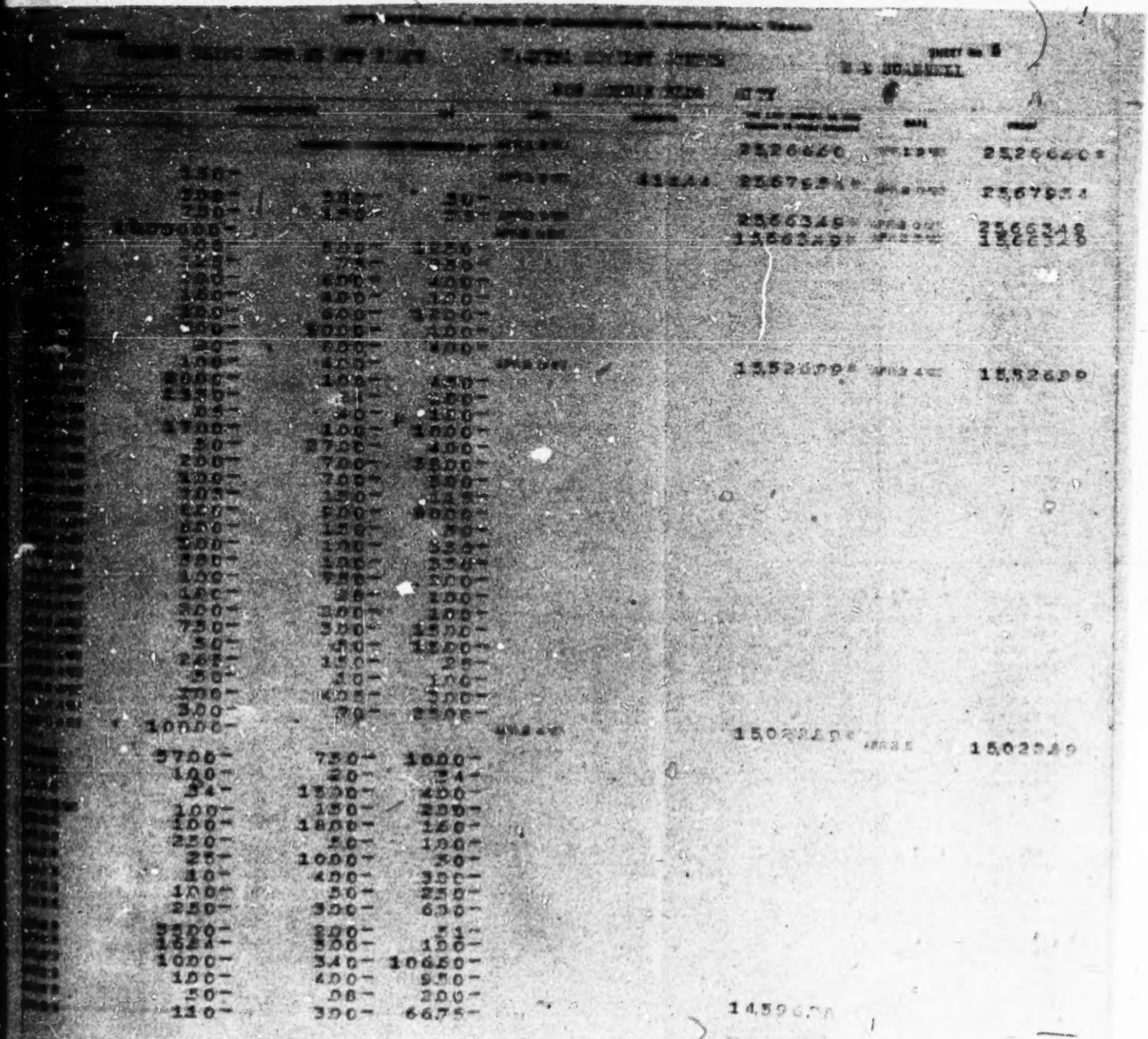
We offer the instruments in evidence, marked "Defendant's Exhibit 124".











CITY NATIONAL BANK OF COMMERCE, WICHITA FALLS, TEXAS

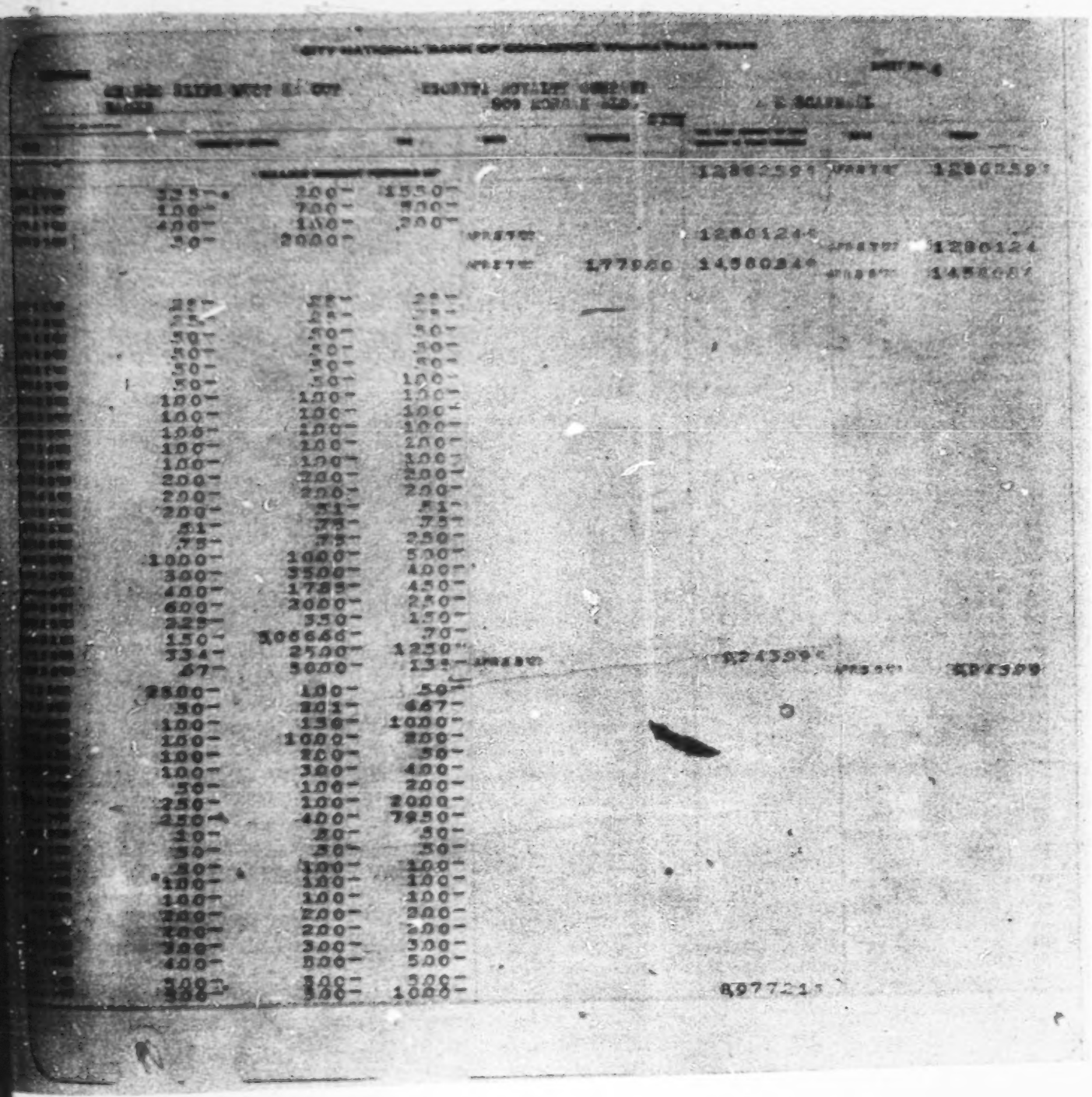
SIGNATURE CHARGE SLIPS MUST BE CUT BACKS

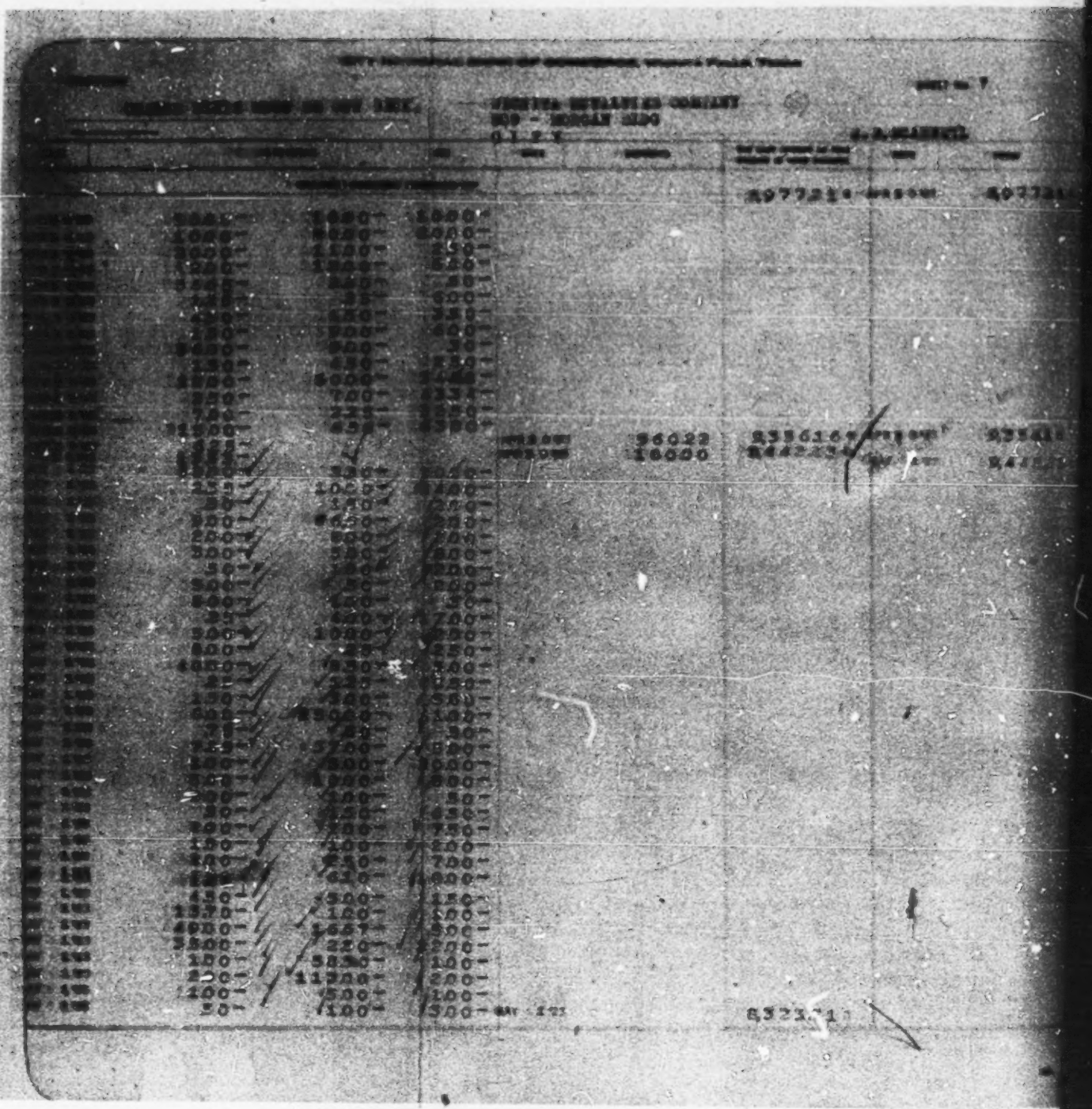
WICHITA ROYALTY COMPANY
609 MORGAN BLDG
CITY

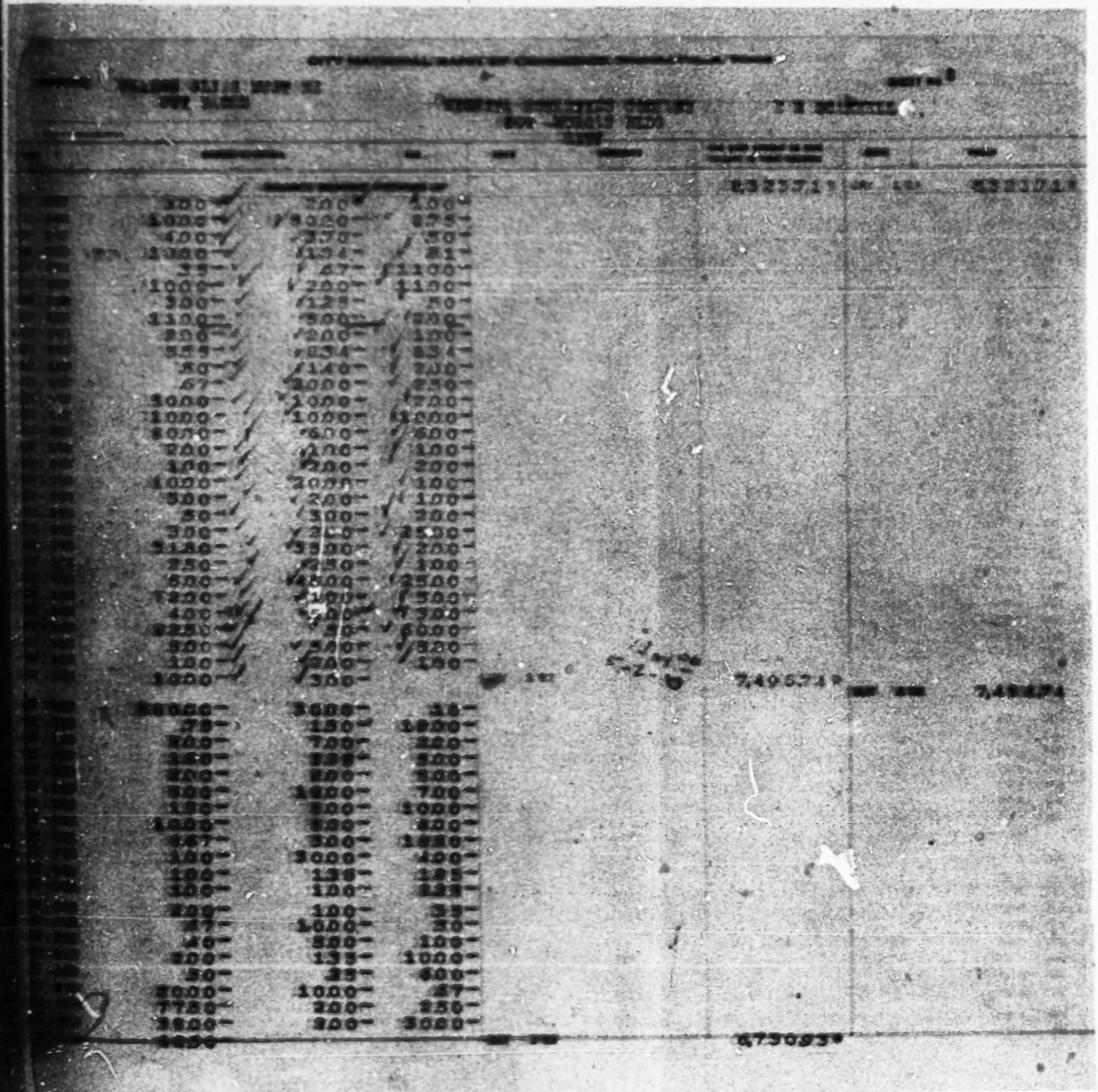
E E SCARNELL

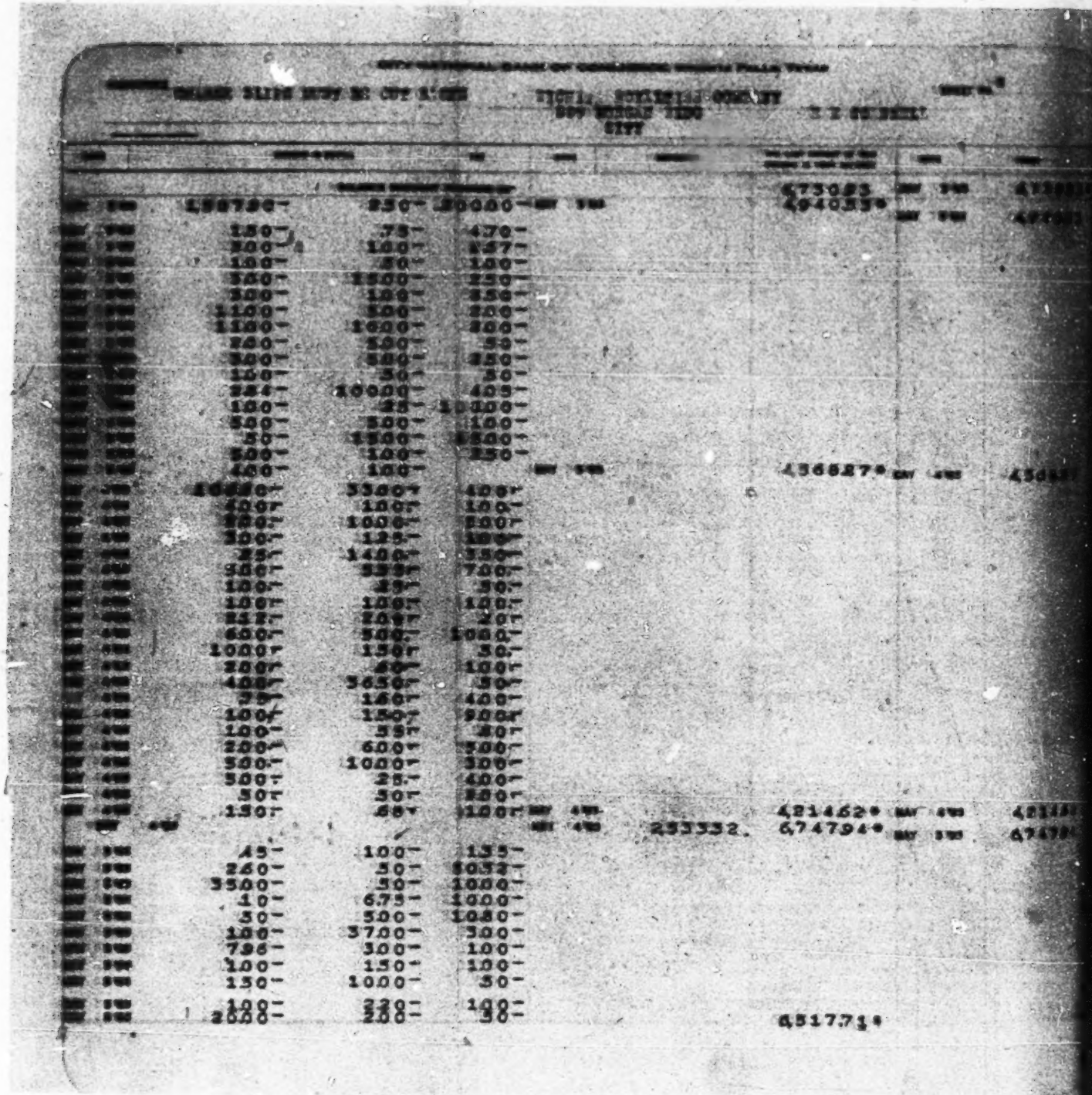
SHEET NO. 6

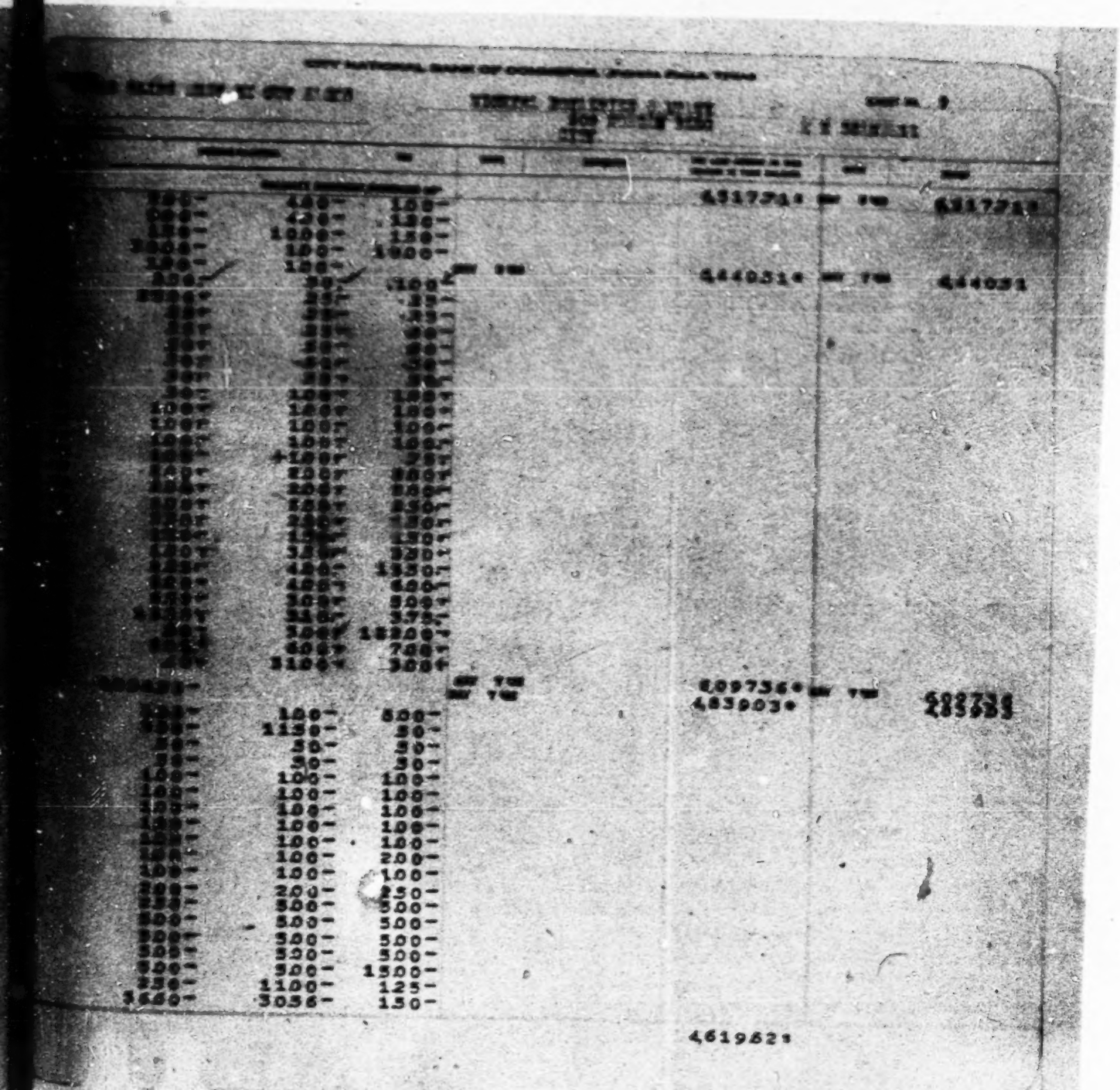
DATE	CHECKS IN DETAIL			DATE	DEPOSITS	THE LAST AMOUNT OF THIS COLUMN IS YOUR BALANCE	DATE	PAID
	BALANCE BROUGHT FORWARD 19"					14596.78	APR 2 5 '93	14,58[illegible]
APR 2 5	17.70	30	25					
APR 2 5	5.00	14.00	5.00					
APR 2 5	8.00	2.00	15.00					
APR 2 5	10.00	8.10	2.70					
APR 2 5	7.00	1.50	25					
APR 2 5	2.00	35.00	6.00					
APR 2 5	15	6.00	35.00					
APR 2 5	5.00			APR 2 5		14,411.83	APR 2 6 '93	14,411[illegible]
				APR 2 6 '93	1,796[illegible]	16,207.47		
APR 2 6 '93							APR 2 6 '93	16,207[illegible]
APR 2 6 '93	1.00	50	21.00					
APR 2 6 '93	1.00	50	3.00					
APR 2 6 '93	3.00	2.00	5.00					
APR 2 6 '93	21.00	2.00	1.00					
APR 2 6 '93	32.50	1.00	35					
APR 2 6 '93	15.00	2.00	2.00					
APR 2 6 '93	3.50	2.00	2.00					
APR 2 6 '93	1.00	2.00	2.00					
APR 2 6 '93	1.50	1.25	2.50					
APR 2 6 '93	13.00	2.00	1.25					
APR 2 6 '93	1.00	1.00	1.00					
APR 2 6 '93	1.00	2.00	2.00					
APR 2 6 '93	3.00	1.00	20.00					
APR 2 6 '93	4.00	20.00	5.00					
APR 2 6 '93	1,526.66	6.00	2.00	APR 2 6 '93		14,463.96	APR 2 6 '93	14,46[illegible]
				APR 2 6 '93		13,4[illegible]	APR 2 7 '93	13,452[illegible]
APR 2 7 '93	1,011.[illegible]	4.50	10.00					
APR 2 7 '93	50	3.50	1.00					
APR 2 7 '93	5.50	4.00	1.00					
APR 2 7 '93	10.00	2.00	6.00					
APR 2 7 '93	6.00	3.00	4.00					
APR 2 7 '93	20.00	53.00	2.00					
APR 2 7 '93	5.00	5.00	2.50					
APR 2 7 '93	2.50	50	31					
APR 2 7 '93	13.00	1.00	1.00					
APR 2 7 '93	50	3.00	6.00					
APR 2 7 '93	40	25	22.50					
APR 2 7 '93	2.00	10	50					
APR 2 7 '93	1.25	1.50	2.00					
APR 2 7 '93	1.00	95.00	4.50					
APR 2 7 '93	5.00	4.00	3.00					
APR 2 7 '93	4.00	52.45	4.25					
APR 2 7 '93	9.00	15.00	1.00					
APR 2 7 '93	2.44	4.00	5.00					
APR 2 7 '93	10.00	36.00	40					
APR 2 7 '93	3.00	75	1.00					
APR 2 7 '93	1.00	5.00	9.00					
APR 2 7 '93	1.33	3.00	1.00					
APR 2 7 '93	4.00	50	50					
APR 2 7 '93	5.50	5.00	65.00					
APR 2 7 '93	15	6.00	15			12,8[illegible]		

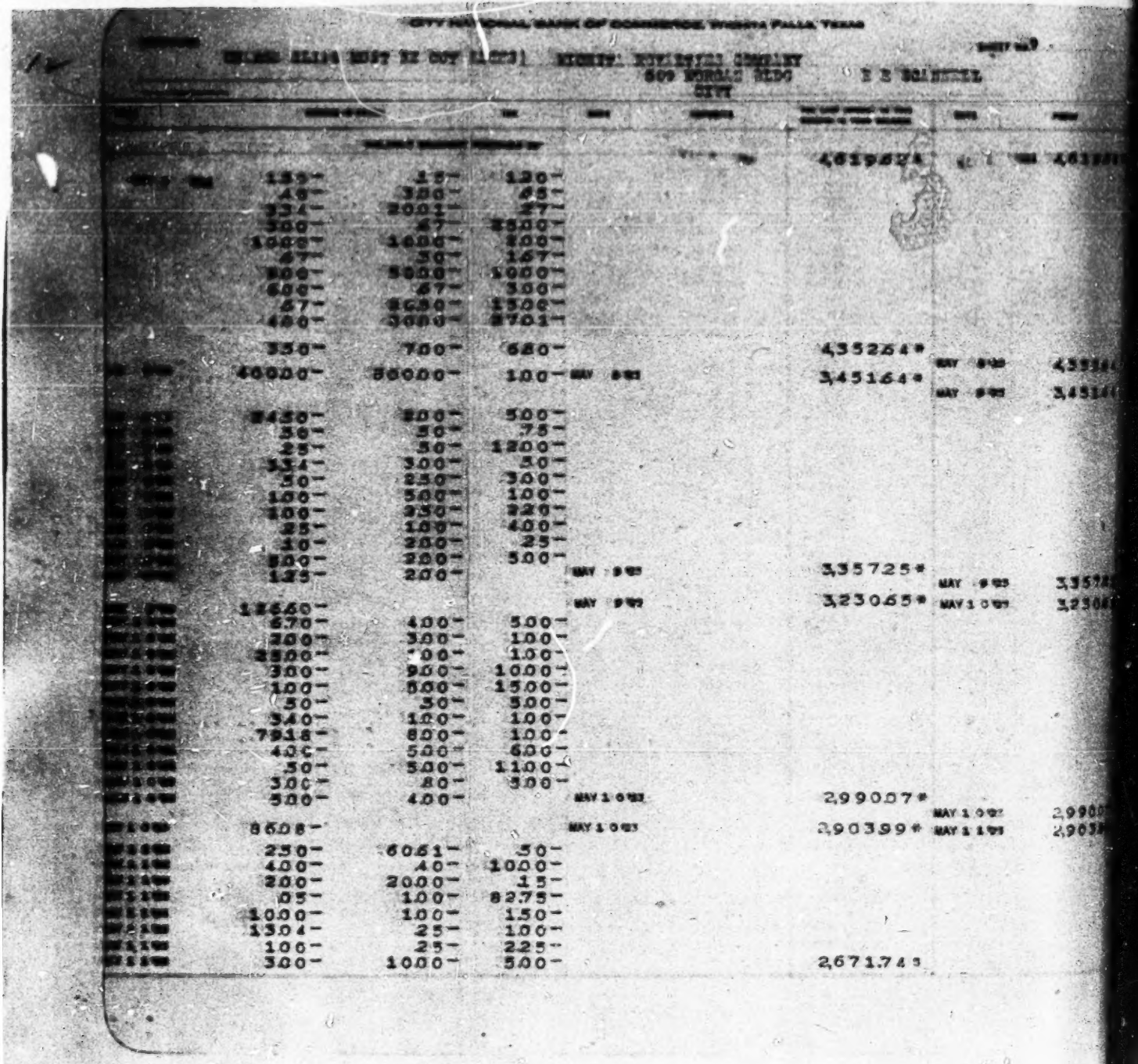


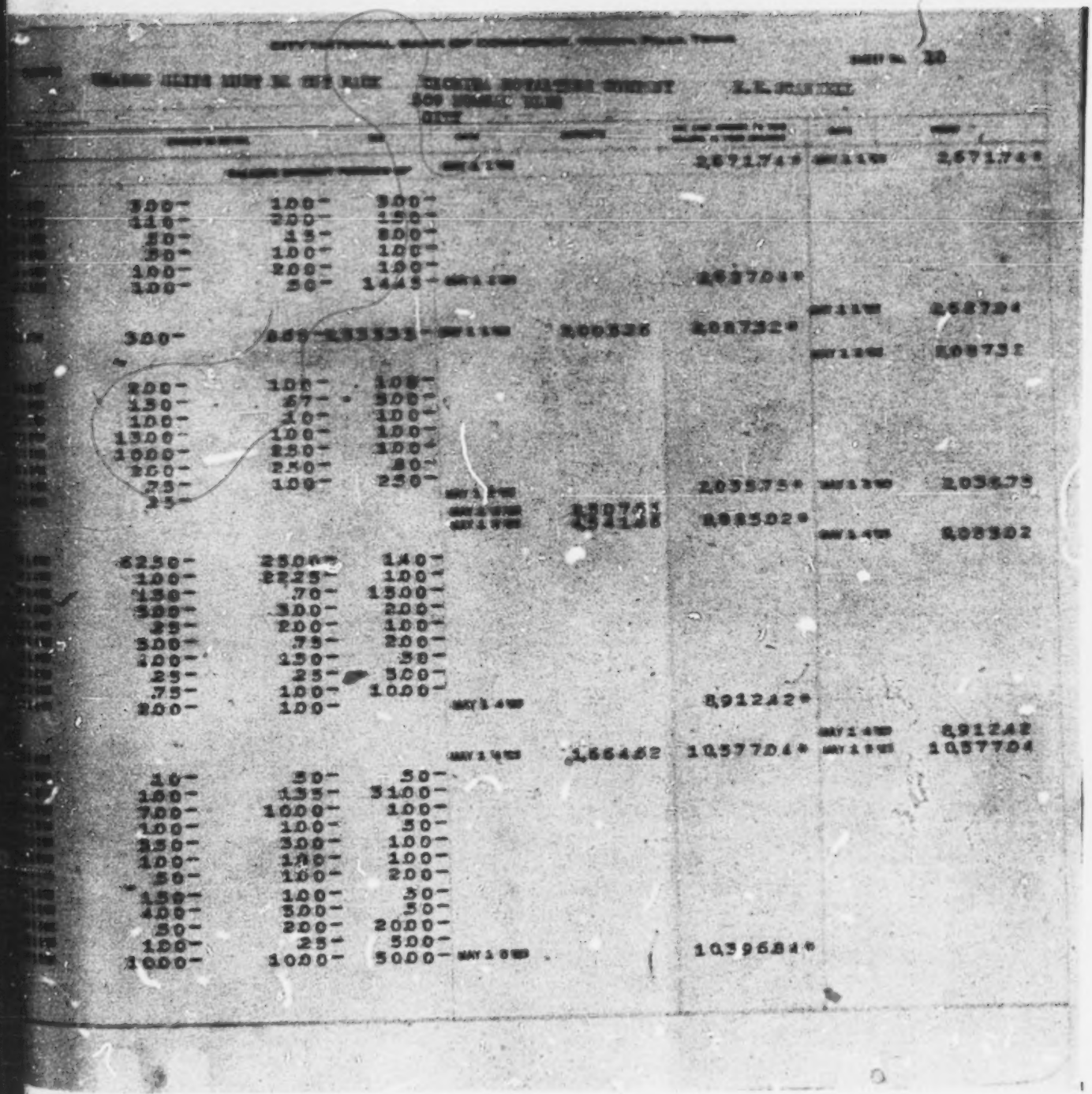












CITY NATIONAL BANK OF COMMERCE, WICHITA FALLS, TEXAS

SHEET No. 10

CHARGE SLIPS MUST BE CUT BACK

[illegible] ROYALTIES COMPANY
[illegible] - [illegible] BLDG
C I T Y

[illegible]

DATE	[illegible]		[illegible]	DATE	DEPOSITS	THE LAST AMOUNT IN THIS COLUMN IS YOUR BALANCE	DATE	[illegible]
		BALANCE BROUGHT FORWARD OF		MAY 1 [illegible]		10,396.84	MAY 1 [illegible]	10,39[illegible]
[illegible]	103.09-	26.67-	2.00-					
[illegible]	1.00-	.75-	1.00-					
[illegible]	6.00-	1.00-	3.00-					
[illegible]	.10-	2.00-	.50-					
[illegible]	1.00-	2.00-	5.00-					
[illegible]	10.00-	1.25-		MAY 1 [illegible]		10,230.98	MAY 1 [illegible]	10,23[illegible]
[illegible]	2.29-	3.00-	12.00-					
[illegible]	3.00-	12.00-	5.00-					
[illegible]	11.50-	.10-	14.50-					
[illegible]	5.00-	1.00-		MAY 1 [illegible]	652.41			
				MAY 1 [illegible]	87[illegible]	10,901.94		
							MAY 1 7 [illegible]	10,90[illegible]
[illegible]	15.00-	.40-	10.00-					
[illegible]	1.00-	2.50-	16.75-					
[illegible]	1.00-	1.00-	3.00-					
[illegible]	30.00-			MAY 1 [illegible]	155.16	10,976.45	MAY 1 8 [illegible]	10,976[illegible]
[illegible]	.50-	2.00-	3.00-					
[illegible]	.25-			MAY 1 [illegible]		10,970.70	MAY 1 9 [illegible]	10,970[illegible]
[illegible]	2.00-	56.00-	3.00-					
[illegible]	.50-	3.75-	.50-					
[illegible]				MAY 1 [illegible]		10,904.95	MAY 1 9 [illegible]	10,904[illegible]
				MAY 1 [illegible]	1208.72	12,113.67	MAY 2 1 [illegible]	12,113[illegible]
[illegible]	25.00-	2.00-	1.00-					
[illegible]	12.75-	1.00-	.50-					
[illegible]	1.00-	.90-	.75-					
[illegible]	.25-	15.00-	8.67-					
[illegible]	1.00-	2.00-	.10-					
[illegible]	5.00-			MAY 2 1 [illegible]		12,036.75	MAY 2 [illegible]	12,036[illegible]
[illegible]	1.00-	1.00-	1.60-					
[illegible]	2.00-	4.00-	2.00-					
[illegible]	.70-	7.00-	3.62-					
[illegible]	1.50-	.50-	1.00-					
[illegible]	1.00-	2.00-	1.00-					
[illegible]	5.00-	1.00-		MAY 2 [illegible]		12,000.83	MAY 2 [illegible]	12,00[illegible]
[illegible]	2.00-	.75-	.50-					
[illegible]	4.00-	3.75-	1.25-					
[illegible]	30.09-	4.15-		MAY 2 [illegible]		11,954.34	MAY 2 4 [illegible]	11,954[illegible]
[illegible]	1.50-	.50-	2.60-					
[illegible]	4.20-	.15-	1.50-					
[illegible]	1.00-	5.00-		[illegible]	5,083.30	17,020.59	MAY [illegible]	17,02[illegible]
[illegible]				MAY 2 [illegible]	2,550.00	19,570.59	MAY 2 5 [illegible]	19,57[illegible]
[illegible]	.10-	5,100.00-	.28-	MAY 2 [illegible]		14,470.[illegible]	MAY 2 6 [illegible]	14,470[illegible]
[illegible]	.50-	1.00-	2.00-					
[illegible]	3.00-	1.25-		MAY 2 [illegible]		14,4[illegible]	MAY 2 [illegible]	14,46[illegible]
[illegible]	20.00-			MAY 2 [illegible]	510.00	14,95[illegible]	MAY 2 8 [illegible]	14,95[illegible]
[illegible]	2.00-	.50-	25.00-					
[illegible]	.10-	6.00-	2.00-					
[illegible]	15.00-	.50-		MAY 2 [illegible]		14,904.36		

STATEMENT MAY 22

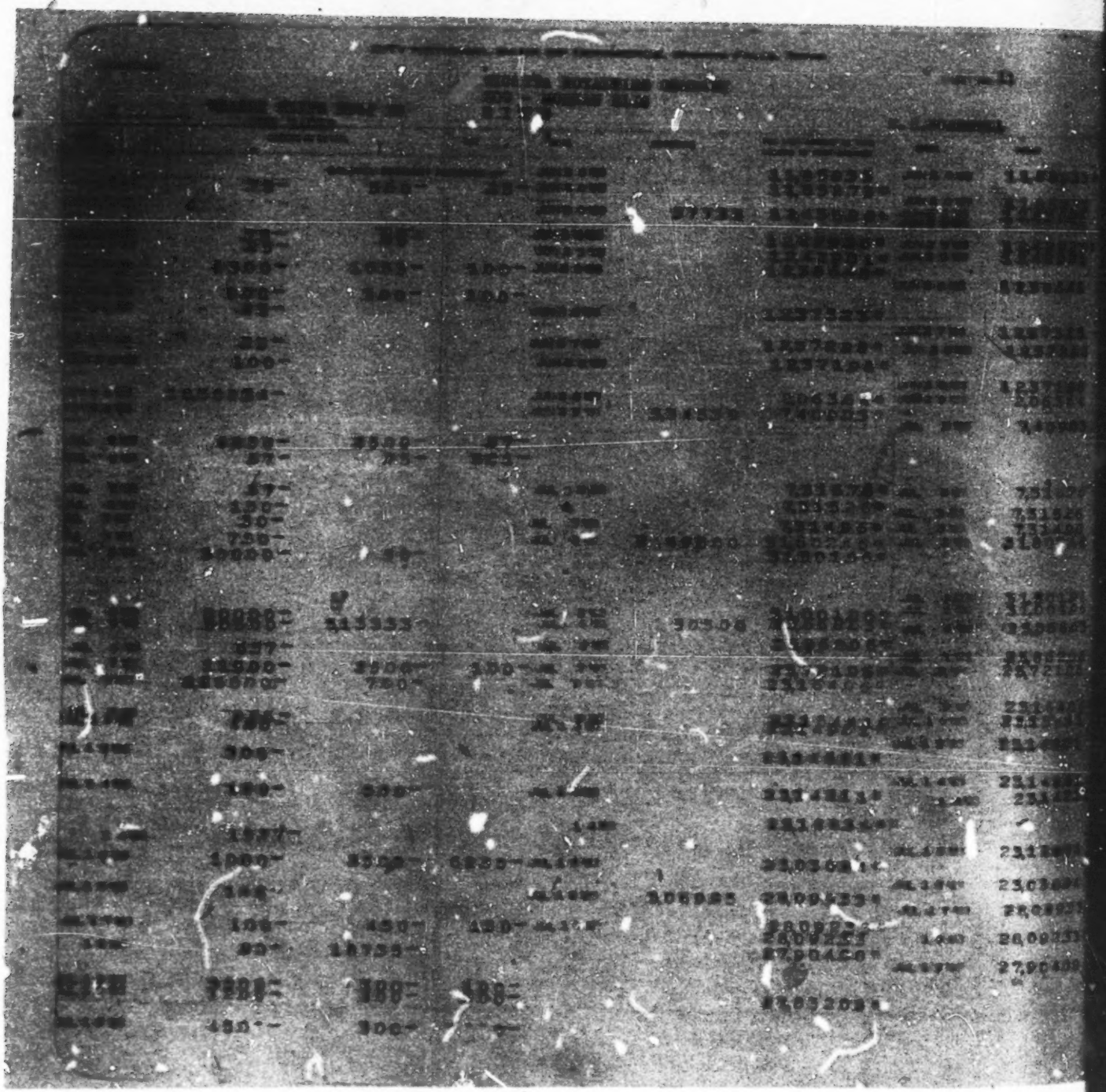
CITY NATIONAL BANK OF COMMERCE, WICHITA FALLS, TEXAS

SHEET NO. 11

WICHITA ROYALTIES COMPANY
509 - MORGAN BLDG
CITY

R. E. SCANNELL

			MAY 2 [illegible]		14901.35	MAY 2 [illegible]	14901.35*
			MAY 2 [illegible]	1,633.90	16,535.26*	MAY 2 [illegible]	16,535.26
211[illegible]-	1.00-	5.00-					
1.00-	50.00-	1.00-					
30-	25-	3.00-					
25-	75-		MAY 2 [illegible]		16,451.41*	[illegible]	16,451.41
3[illegible]-	62.50-	25-					
75-	10.00-	14-					
50-	1.00-	2.00-	MAY 3 [illegible]		16,374.92*	MAY 3 [illegible]	16,374.92
					16,373.42*	JUN 1 [illegible]	16,373.42
150-			JUN 1 [illegible]		16,371.42*	[illegible]	16,371.[illegible]
50000-	25.00-	10-					
600-	3.00-	50000-	JUN 3 [illegible]		15,537.32*	JUN 4 [illegible]	15,537.32
[illegible]-	56.30-	1.00-	JUN 4 [illegible]		15,537.07*	[illegible]	15,537.07
100000-			JUN 5 [illegible]		10,45[illegible]21	JUN [illegible]	10,45[illegible]21
150-	150-	10.00-					
500-	3.00-		JUN 6 [illegible]		10,431.21*	JUN 6 [illegible]	10,431.21
1100-			JUN 4 [illegible]		10,420.[illegible]1*	[illegible]	10,420.[illegible]1
1[illegible]-	15-	25-					
25-			[illegible]		7,8[illegible]	[illegible]	7,8[illegible]
1[illegible]0000-			[illegible]		6,8[illegible]	[illegible]	6,8[illegible]
100-	1.00-	2.00-	JUN 8 [illegible]		6,85[illegible]	[illegible]	6,85[illegible]
600-							
150-	50-	20-	JUN 9 [illegible]		6,854.[illegible]		
10-						JUN 11 [illegible]	6,854.[illegible]
5000-	700-	1100-	JUN 11 [illegible]		6,7[illegible]		
600-						JUN 11 [illegible]	6,7[illegible]
			JUN 11 [illegible]	1,6[illegible]	8,4[illegible]		
						JUN 1[illegible]	8,4[illegible]
500-	50-	3.00-					
900-	20-	50-	JUN 1[illegible]		8,4[illegible]	JUN 1[illegible]	8,4[illegible]
150-	300-	3.00-	JUN 1[illegible]		8,40[illegible]	JUN 1[illegible]	8,4[illegible]
750-	700-		JUN 1[illegible]		[illegible]		
300-	1.00-	1.00-	JUN 1[illegible]		[illegible]	JUN 1[illegible]	8,[illegible]
6000-			JUN 1[illegible]		8,[illegible]	JUN 1[illegible]	8,[illegible]
1[illegible]0-					8,[illegible]		
						JUN 16 [illegible]	8,333.35
1[illegible]-	50-	150-	JUN 16 [illegible]		8,330.00*	JUN 18 [illegible]	8,330.00
25-	2.00-		JUN 18 [illegible]		8,327.75*	JUN 19 [illegible]	8,327.75
5000-	28-	1.00-					
50-	1.00-		JUN 19 [illegible]	3,584.36	11,859.33*		



CITY NATIONAL BANK, WICHITA FALLS, TEXAS

SIGNATURE CHARGE SLIPS MUST BE CUT BACK

WICHITA ROYALTIES COMPANY
509 - MORGAN BLDG
CITY

SHEET NO. 12
E. E. SCANNELL

DATE	CHECKS IN DETAIL			DATE	DEPOSITS	THE LAST AMOUNT IN THIS COLUMN IS YOUR BALANCE	DATE	PROOF
	BALANCE BROUGHT FORWARD			JUL 19		27,832.08	JUL 19	27,832.08
	45.00	3.00	12.00					
JUL 19	3.00			JUL 19		27,769.08	JUL	27,769.08
JUL	3.00	3.00	60.00					
JUL	1.50	7.50	6.00					
JUL	319.80	1.50	10.20					
JUL	39.00	45.00	3.00					
JUL	1.53	19.50	9.00					
JUL	7.95	15.00	3.00					
JUL	1.50	96.75	24.00					
JUL	1.50	10.50	6.00					
JUL	.72	.25	.75					
JUL	15.00	.75	1.50	JUL				
JUL	.75	12.00	3.00					
JUL	30.00	12.00	18.93					
JUL	28.50			JUL		26,949.20		26,949.20
JUL	3.00	22.50		JUL		26,923.70		26,923.70
JUL	3.00	10.50	3.75					
JUL	6.00	1.50	60.00					
JUL	4.80	3.00	3.00					
JUL	.30	16.50	21.00					
JUL	6.00	39.00	9.00					
JUL	15.00	90.00	1.05					
JUL	6.00	1.35	22.50					
JUL	7.50	14.10	12.00					
JUL	6.00	3.00	3.00					
JUL	30.00	7.50	3.00					
JUL	30.00	3.00	.60					
JUL	24.00	6.00	.42					
JUL	18.00	.84	30.00					
JUL	[illegible]	46.50	3.00					
JUL	12.00	7.50	.30					
JUL	.75			JUL		26,316.44	JUL	26,316.44
JUL	.15			JUL		26,331.29	JUL	26,331.29
JUL	25.00	.75	.25					
JUL	4.20	3.00	.75					
JUL	37.50	6.00	7.50					
JUL	6.00	15.00	53.10					
JUL	3.00	45.00	30.00					
JUL	3.00	.75	6.00	JUL				
JUL	6.00	285.00	45.00					
JUL	63.00	24.00	3.00					
JUL	.75	1.50	9.00					
JUL	3.00	.45	12.00	JUL		25,631.79		

CITY NATIONAL BANK WICHITA FALLS TEXAS

	10500	1605	600		
	600	5400	500		
	150	1500	1800		
	120	450	600		
	360	3000	200		
	300	150	19500		
	1200	450	1500		
	3600	6000	300		
	600	300	300		
	600	600	50		
	150	600	450		
	1200	1500	1050		
	1500	900	300		
	10920	270	300		
	300	2100	1800		
	150	75	600		
	300	675	3240		
	150	210	600		
	300	150	3000		
	1500	450	600		
	300	75	600		
	3900	3300	600		
	750	300	1200		
	1050	3000	300		
	150	150	2100		
	150			24468.79	
	1800	75			
	300	900	300		
	375	300	900		
	750	23754	1500		
	30	300	10		
	30	150	75		
	153	153	150		
	750	153	378		
	150	17100	150		
	600	600	600		
	300	150	1500		
	600	8400	300		
	600	60000	150		
	300	300	1500		
	600	105	300		
	45	300	10500		
	300	300	750		
	375	300	300		
	2700	1200	4500		
	3000	300	3900		
	450	300	1500		
	1500	9750	1500		
	750	300	1800	23325.96	

1243 Mr. Rogers:

Also the liability account of W. H. Peckham.

(Marked "DEFENDANT'S EXHIBIT 130," as follows:)

Old Balance	Date	Time	Rate	Number	Debit Amt.	Cr. Note Paid	Balance
6,120.00	Mar. 9, 1926			71339		8.00	
						4,582.00	
	Mar. 9			72286	8%	6.89	
						1,013.11	
	Mar. 9			72349	8%	3.66	
						506.34	.00*
	Mar. 23	60	8%	75457	2,500.00		2,500.00*
2,500.00	Mar. 30	60	8%	75865	2,500.00		5,000.00*

1244 The Witness:

I do not know the aggregate total of money that was transferred from the Wichita Royalty Company's account to G. W. Peckham's account in the City National Bank during the trusteeship of G. W. Peckham, I will try to figure that out for you. During the trusteeship of G. W. Peckham, he paid out $201,165.89 from his personal account with the plaintiff bank, to the plaintiff bank upon his personal indebtedness to the bank from January 1, 1923, to the date of his death. I will give the dates and the amounts of those items.

February 2, 1923, $594.75; March 5, 1923, $1,000.00; March 6, 1923, $500.00; March 8, 1923, $500.00; March 8, 1923, $500.00; April 23, 1923, $4,994.15; May 15, 1923, $1,008.55; June 22, 1923, $3,050.60; August 10, 1923, $3,985.78; November 13, 1923, $1,000.00; November 20, 1923, $2,000.00; November 22, 1923, $1,000.00; November 30, 1923, $1555.82; February 5, 1924, $67.67; February 21, 1924, $5,022.28; March 17, 1924, $10,000.00; May 1, 1924, $2,048.07; June 7, 1924, $4,027.47; June 7, 1924, $1,000.00; June 11, 1924, $234.22; July 3, 1924, $967.67; August 2, 1924, $58.77; August 5, 1924, $117.56; October 30, 1924, $12,500.00; November 3, 1924, $5,100.00; November 10, 1924, $200.00; November 29, 1924, $15,069.99; December 13, 1924, $12,016.00; February 5, 1925, $10,200.00; February 18, 1925, $15,210.00; April 7, 1925, $12,162.66; April 7, 1925, $80.00; May 12, 1925, $4,056.00; June 6, 1925, $220.00; June 11, 1925, $66.67; July 7, 1925, $12,072.00—making a total of $143,286.68.

1245 That aggregate total represents payments made by G. W. Peckham from his personal account with the bank upon his personal indebtedness, from January 1, 1923 to November 17, 1925. November 17, 1925, $1,007.23; February 13, 1926, $550.00; May 15, 1926, $550.00; August 10, 1926, $550.00; September 30, 1926, $503.10; November 12, 1926, $3,050.00; January 19, 1927, $2,506.12; March 16, 1927, $1,500.00; April 23, 1927, $10,963.75; August 23, 1927, $350.00; October 19, 1927, $520.00; February 15, 1928, $513.33; July 20, 1928,

$493.78; September 27, 1928, $3,163.78; December 4, 1928, $614.50; January 12, 1929, $2,013.33; May 11, 1929, $373.76; June 24, 1929, $20,214.44; August 24, 1929, $381.09; September 2, 1929, $5,000.00; October 25, 1929, $3,061.00—making a total from November 17, 1925 to October 25, 1929, of $57,879.21. Those two totals aggregate $201,165.89, and they are all reflected as charges against the deposit account of G. W. Peckham which is in evidence, and credits upon the liability account of G. W. Peckham, which is in evidence. In addition to those, Mr. Peckham paid to the bank upon other items which he was personally liable, different sums of money during this period of time from his personal account. On November 1, 1928, he paid $4,200.00 and that was credited to the account of Reverend J. M. Sweeton, that was for a note held by Reverend Sweeton, signed by Mr. Peckham. On 5-2-28 he paid a note and interest to Reverend Sweeton, $1,230.00. This Sweeton note in no way had any connection with the City National Bank, it
1246 was an item for collection. On March 18, 1924, G. W. Peckham paid to the City National Bank for W. H. Peckham's note $10,026.75; On February 24, 1925, he paid $6,010.67 on a note for Tolowa; on April 19, 1923, he paid on a note to the City National Bank, $889.66, that was on principal and interest on a note that was previously charged off. Mr. G. W. Peckham was the maker of the charged off note. On February 21, 1924, G. W. Peckham paid on a note of Griswold Oil Corporation, $3,000.00. On June 11, 1924, he paid off $5,000.00 that had been previously charged off. I have included in my aggregate total the payment he made to the Griswold Oil Company, $21,927.80. Regarding the Griswold note, I think in checking the record that that item, it was marked on the sheet and says, "Griswold note," and I really think that that was the balance due, I mean that was a payment on the charged off note, and the boys in handling the note in the department made a mistake in writing it up as the Griswold note. That is my personal opinion of it. As far as he

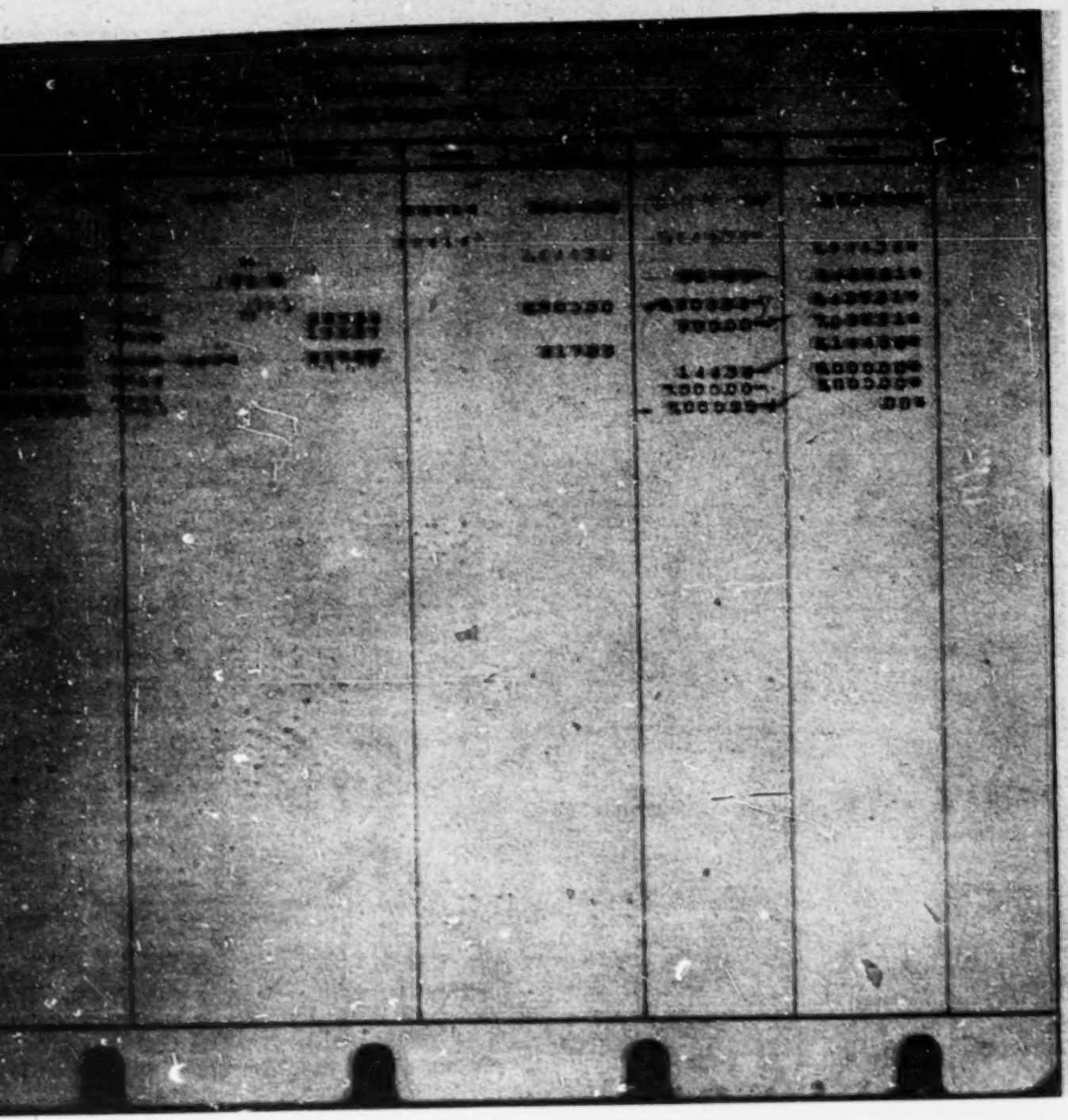
being indorser on the note, we have no record to show that he was; so the best I can check that, it was his personal indebtedness. I could not say whether Mr. Peckham was an indorser on the Tolowa note or not, the records do not reflect. He could have been without the records reflecting.

The check dated December 18, 1923, for $632.27, of George Peckham's, payable to the bank's order, was paid on Mr. Peckham's charged off note. I could
1247 not tell you what disposition the bank made of the check for $25.00, dated June 30, 1925, they did not necessarily get the money, they could have paid out cash on it. I have the liability records showing what I refer to as the charged off liability account of Mr. Peckham.

Mr. Rogers:

We wish to offer it in evidence.

(Marked "Defendant's Exhibit 131" as follows:)



1249 The Witness:

Mr. Peckham's deposit to his personal account during his trusteeship totaled $1,608,999.13, and there was a total of checks drawn against the trust account and deposited to Mr. Peckham's personal account of $253,418.41, which is almost fourteen percent of the aggregate total deposit to his account during that period, that is funds transferred from his trust.

I have available the books and records of the bank, the Marlborough Partnership, the Texas Investment Company, and G. W. Peckham's canceled checks and bank statements, with the bank, with some exceptions, and the books and records of the royalty company during the trusteeship of G. W. Peckham. I will give you the amount G. W. Peckham paid in his original purchase, and subsequent improvements, on the Marlborough Addition, to the grantor or other persons for the account of that partnership, or its successor; December 2, 1925, $250.00; February 12, 1926, $150.00; April 15, 1926, $7,500.00; May 20, 1926, $2,000.00; June 2, 1926, $1,500.00; June 7, 1926, $1,000.00; June 19, 1926, $4,500.00; 7-1-26, $400.00; 7-23-26, $1,000.00; September 19, 1925, $7,738.50; January 8, 1926, $909.00; December 12, 1926, $7,738.50. The checks for the above items are in evidence, and total $34,686.00, and is the total amount that G. W. Peckham paid from his personal account with the plaintiff bank upon that venture. I will give the same information in respect to J. T. Harrell, December 2, 1925, $250.00; February 12, 1926, $150.00; May 10, 1926, $3,750.00;

1250 May 19, 1926, $2,000.00; June 3, 1926, $3,000.00; September 19, 1925, $3,869.25; January 8, 1926, $454.50; October 14, 1926, $3,869.25—a total of $17,343.00. On this item of G. W. Peckham, payable to the Marlborough Addition, I testified as of September 19, 1925, of $7,738.50, Mr. Peckham paid out of his personal account $3,869.25, and W. H. Peckham paid the same amount. That would make his total personal outlay $42,628.60.

The partners, in the purchase and improvement or otherwise of the firm assets of the Marlborough prior to March 1, 1926, expended in cash, $18,995.00. They had incurred liability in excess of $50,000.00 in the original purchase of the property—the deeds are in evidence and disclose accurately the amount of it. There were four partners prior to March 1, 1926, and if they each contributed their pro rata part of the payments, had spent one-fourth of $18,895.00, that would be $4723.75.

In March, 1926, G. W. Peckham obtained a deed from his brother, W. H. Peckham to one quarter interest in the venture, and gave his check for $11,811.85. W. H. Peckham was never out any money on that venture, but I do not know how much profit he made, because I do not know anything about his business, all I know is what the books show. I am testifying from the Marlborough books, and from my investigation, it is my opinion that the books correctly reflect the contribution of each partner to that venture.

Trust check No. 478 for $17,623.70 was deposited to George Peckham's account in the City National
1251 Bank; trust check No. 479 for $6,000.00 was handled by the Security National Bank.

The trust books show that on March 6, 1926, the royalty company issued its two checks totaling $23,623.00 for a half interest in the Marlborough Addition. I do not know what a half interest in the Marlborough Addition cost the partners. I know what they spent, according to the books of the Marlborough Addition, each one of them, $4,723.75. Mr. Harrell and Mr. Kemp had to spend $4,223.75 each, and the Peckham brothers the same amount. The difference between what the two Peckham brothers had spent and what G. W. Peckham caused his trust to issue its check for, for such interest, is $15,175.20.

On the first day of March, G. W. Peckham owed the plaintiff bank $28,050.00, which I imagine included interest. On March 1, 1926, the City National Bank loaned the Wichita Royalty Company $25,000.00 and charged

their liability account with $25,500.00, being the principal and interest. The deposit for that amount is written in the handwriting of J. T. Harrell. G. W. Peckham's personal balance in the bank on that day was $341.90, and that is the day, March 1, that G. W. Peckham issued his personal check to W. H. Peckham for $11,811.85. There was an opening balance on March 1, of $341.90. On that day G. W. Peckham's account was insufficient to clear the $11,000.00 item. His closing balance that day was $566.90, on March 1 his account decreased $225.20. That was the beginning balance of March 6, 1926, and also the closing balance on the fourth. That is
1252 is the day he deposited his check No. 478 to that account, of $17,623.70. Before W. H. Peckham presented his check and it was paid on March 9, since March 1, and included that day, G. W. Peckham had total checks charged against his account of $5,989.50, made up of several items; one of them for $5,060.00 was payable to the order of J. T. Harrell and C. E. Basham, balance payment on Stephens Royalty.

At the time W. H. Peckham deposited this eleven thousand and some odd dollar check to his account, his balance, March 6, was $518.52. At that time he owed the bank $6,120.00, which he paid on March 9. $6,101.45 of that amount was proceeds of this eleven thousand and some odd dollar check which Peckham gave him upon his account. In other words, charging G. W. Peckham's account with all checks cleared against it prior to the clearing of the eleven thousand and some odd dollar check, that reduced his balance below $17,623.70, so that the eleven thousand dollar check was necessarily paid out of the proceeds of the seventeen thousand and some odd dollar check. The same is true with reference to W. H. Peckham paying the bank on the 9th, his personal liability, but of course the bank did not ask him where he got the $6,101.45. Mr. Harrell handled this transaction for the bank. G. W. Peckham gave J. T. Harrell and C. E. Basham a check for $5,060.00 in payment of the Stephens Royalty and $4,844.80 of that

was out of this transfer, $17,623.70—not out of the transfer, but out of the old deposit, I should say.

In a great number of cases I did tell Mr.
1253 Humphrey, while I was testifying, that the moneys were used for the purposes shown by the voucher notations. I said this was to apply on purchase of one-half interest in the Marlborough Addition and the deed so recited that it was. Mr. Harrell and Mr. Basham were paid by G. W. Peckham out of his account, $5,087.00, the check was dated March 31 and paid April 1, 1926. On March 31, the $7,500.00 deposit was made to G. W. Peckham's account, as the proceeds of the Wichita Royalty Company check; that deposit made G. W. Peckham's then balance $8,003.98; the next day he issued three checks, one for $500.00, one for $200.00, and the third to J. T. Harrell and C. E. Basham for $5,087.00. That March 31, $7,500.00 deposit was shown upon the trust books to be applied upon the Marlborough Improvements. On April 15, 1926, G. W. Peckham paid to the Marlborough Addition account $7,500.00, out of his private account, however, he had other accounts than in the City National Bank. He made the next payment to the Marlborough May 20, 1926, $2,-000.00. After the March 31 deposit of $7,500.00, he checked against it until prior to May 20, he reduced it to a minimum of $248.09. His account got down to $202.64 at one time, after the $7,500.00 deposit, it got down to that on May 8, 1926, on May 4, it was down to $187.48. On May 15, 1926, Mr. Peckham paid upon indebtedness to the bank, $550.00. On August 10, he paid $550.00. The next check that the trust books show to have been issued with voucher notation to be applied upon Marlborough Addition was check No. 503
1254 for $3,000.00, which was deposited to the personal account of G. W. Peckham, May 20, 1926; that is the day G. W. Peckham paid from his personal account to the Marlborough Addition, $2,000.00. He made the next payment to the bank August 10, 1926. $550.00, and prior to this payment to the bank, he had

paid the Marlborough Addition another $1,000.00 on June 7. At the close of business June 4, his balance had been reduced to $10.18. On June 2, he made a payment to Marlborough of $1,500.00; then on June 2, 1926, the trust check 507 for $1,500.00 was deposited to his account, that was the same day he made that payment to the Marlborough for the same amount. It is true that with the exception of $10.18, he had checked out all these former deposits before his $1,000.00 payment on June 7. The next payment to the Marlborough Addition, personal payment, was on June 19, 1926, $4,500.00; the next payment was July 23, 1926, $1,000.00. Without going into detail, Mr. Peckham caused some $50,000.00 worth of checks to be shown upon his books to have been applied to the purchase and improvement of Marlborough Addition, I would not say whether most of those checks were payable to the drawee bank or not, without seeing the checks, there have been so many I don't remember off-hand, most of them were, but some of them were not. Part of them were deposited to his personal account with the bank, that $6,00.00 check was not; then there are two checks in here issued after his death that were not deposited to his account. Those that were issued by G. W. Peckham during his
1255 lifetime, other than the $6,000.00, cleared through the Security National Bank, were deposited to his personal account with the bank. He also checked upon his personal account for various purposes and made individual deposits as well. Sometimes he did not remit to the Marlborough Addition as such, nor make payments in the amount and at the time that he received funds out of the trust account. On this $3,000.00 deposit that he made, on the same day he paid $2,000.00 to the Marlborough Account, and on June 2, he made a deposit of $1,500.00 and on the same day he paid that amount to the Marlborough and he paid another $1,000.00 on June 7; of course, the balance had been reduced to $10.18, on June 4, he made a deposit on June 5. He transferred, in payment to the Marl-

borough Addition, two thousand dollars of the three thousand dollars, to the Marlborough Addition.

I will refer to trust checks as follows: No. 495, March 23, 1926, for $300.00; No. 506, May 29, 1926, for $500.00; No. 521, July 16, 1926 for $300.00; No. 531, August 27, 1926, for $500.00; No. 540, October 13, 1926, for $300.00; No. 569, January 11, 1927, for $300.00; No. 599, April 14, 1927, for $300.00; No. 615, June 8, 1927, for $500.00; No. 628, July 16, 1927, $1,500.00; No. 682, January 18, 1928, $2,000.00; No. 717, May 17, 1928; No. 721, June 1, 1928, $424.66; No. 733, July 23, 1928, $220.00; No. 752, September 27, 1928, $424.66; No. 768, December 4, 1928, $2,000.00;
1256 No. 791, February 19, 1929, $1,500.00; No. 814, June 7, 1929, $1,500.00; No. 824, July 15, 1929, $212.49; No. 836, August 30, 1929, $1,000.00; No. 856, November 26, 1929, $1,500.00; No. 890, February 4, 1930, $1,000.00; No. 898, April 10, 1930, $1,000.00; No. 920, June 14, 1930, $1,500.00; No. 930, July 14, 1930, $3,055.42.

Each of the above checks are identified, and were payable to the order of the plaintiff bank, drawn upon the Wichita Royalty Company's account with the bank, and credited by the bank upon the liability record of the Wichita Royalty Company as it appeared upon the records of the bank, except check No. 752, for $424.66, was deposited to his account, and he paid out of his personal account on that same day that amount on that note. That check was payable to the bank's order. The notation says, "Interest on notes held by the City National Bank." I do not find any other payments made by the Wichita Royalty Company out of his account direct to the bank and credited upon the liability record with the bank during the period of time from March 1, 1926 to date, other than those items I have called off. Those payments were made upon items of indebtedness arising on the 18th of January and on March 1, and renewals of indebtedness. If it should be determined that in whole or in part that original indebtedness was that of G. W. Peckham personally, nevertheless these items have been credited upon it, and the liability

records of the bank reflect the credits—it is not shown,, however, that it was G. W. Peckham's liability, it was a liability of the Wichita Royalty Company and so shows, stands in their name.

1257 I have the deed with reference to the Porter Ranch, I do not recall whether there was a contract prior to the time of its purchase and sale I have the file on the Porter Ranch, but I have not found the contract prior to this deed. I will undertake to find such contract, concerning the purchase and sale of the Porter Ranch. The first notation of any character in the books and records of the Wichita Royalty Company relating to the Porter Ranch, Property 83, was December 28, 1925; the check for $1,250.00, dated 12-28-25, was the first entry of any kind or character concerning the Porter Ranch on the books and records of the Wichita Royalty Company. Check No. 451, and the voucher notation made after its issuance, represents the first transaction on the Porter Ranch. That was some twenty-seven days after the deed to G. W. Peckham and others. To my knowledge, I do not know of any deed or other memorandum in writing signed by G. W. Peckham conveying any interest in the Porter Ranch to the Wichita Royalty Company, or conveying his holding an interest therein for the account of the Wichita Royalty Company, however, there could be and I would not know about it. Of course, I have not gone into the Wichita Royalty Company's office and dug around to see what I could find, all I have is what has been turned over to me for me to see in their office. They told me I could see whatever I asked for. They have kept nothing back that I have asked to see, except a list of the stockholders and the checks, dividend checks to the stock-

1258 holders. There is a number of checks charged to the account of Wichita Royalty Company in the City National Bank, that they did not let me see. I do not care to see them now.

From my experience in the City National Bank, I am familiar with the records that are made with respect

to a note receivable by the bank; the first entry made goes on the liability ledger of the bank, and the customer either receives the cash or a deposit slip for the amount of money he is entitled to from that note. We give him an individual liability ledger sheet, on that enter such renewal as are made, and such payments to which the item is entitled to credit, and finally upon its final payment, it clears off. Each of such individual liability ledger sheets shows a clearance and a balance every time an individual whose ledger account that is, no longer indebted to the bank. As to the note registry, the system we now use is, we carry a journal sheet along with the liability sheet; in other words, there is a large sheet goes in the machine and stays in there during the day as each man's sheet is posted it is also posted on the journal sheet. I think that system begun about 1928, and has been used since that time. We do not have a note record wherein all of our notes receivable are catalogued, just the journal sheet is all. Of course, the notices are made up day by day and the notes are made that we sent out to the customers. At any time and any day we can determine from our record who owes the notes receivable and the amounts.

1259 When the bank wants to borrow money from a Dallas bank, for instance, there are two methods that can be used, we can either re-discount and sell such note receivable to the bank and get the money on it, or we can hold the note up and put these notes up as collateral. If we put the notes up for collateral, there would be a copy of the notes made and held in our files, and it will show that it is collateral to bills receivable at such and such bank. If we rediscount the note or sell the note, it clears out of our records. In such event, we would credit the several liability sheets with the full amount and balance it off. In other words, for instance, if I have a note in the bank for $1,000.00 and I sell it to the Dallas Bank, I take that note out of the case and give your account credit for it, and the Dallas bank will own the note, we mark

it sold to such and such a place. Each individual liability ledger will show that this note sold to such bank, or whoever it was. If we borrow some money from the First National Bank in Dallas, we would give them our bills receivable as collateral and we would have the original note—the note would go down, and we would have to sign a pledge agreement, pledging those notes as security and on that pledge agreement there would be a list of the notes we had pledged. Ordinarily we would keep a copy of the pledge agreement in our bank, and I am sure it would become a part of our permanent records. We usually keep a copy of the repurchase agreement, make it up in duplicate, showing we had agreed to repurchase.

1260 In respect to the $100,000.00 that was borrowed from the First National Bank and other moneys which the City National Bank of Wichita Falls borrowed, I can show you on the books where the notes went down, $100,000.00 on that particular day. I do not have the copy of the repurchase agreement, and do not know whether there was a repurchase agreement behind that $100,000.00 or not. I did not handle the deal myself. I know that there was $100,000.00 worth of notes out of the case. My records showed that the notes went down $100,000.00 on that day. That is on the general ledger, on the general books. The general books, every transaction after the close of the day's business, everything goes to the auditor, and it is set up on the general ledger of the bank, all transactions from all over the bank. I have here the loan and discount sheet out of the general ledger, shows December 31, 1931, the loans of the City National Bank went down $120,913.32. This is part of our permanent records, that is, in the City National Bank of Wichita Falls, shows the loans and discounts, this just carries the total. The individual liability sheets would show the items that made up that reduction. When a note is charged off it is charged to profit and loss, charged on the liability sheet—it is credited, I mean—on the liability sheet of

the individual that owes the money, and is taken out of the active files of the bank, provided that is all he owes the bank. It is put over in a separate record. I would have to go through all of the ledger sheets of the bank in order to show you what the $120,913.32 consisted of. That $100,000.00 is all the repurchase
1261 agreement that was outstanding on December 31, 1931. We owed rediscount for the Federal Reserve Bank of Dallas, $423,363.33, on that day; we owed bills receivable, $927,906.07, making a total of $1,451,269.40—which includes the $100,000.00. The total above given is the sum owed by the City National Bank of Wichita Falls. I am probably wrong about that, this $100,00.00 that was set up there did not show it was owed by the City National Bank, because these notes had been sold out of the bank. The bank records show that the bank owed on December 31, 1931, $1,451,269.40, in the following amounts, $100,00.00 at the First National Bank, which consisted of rediscount bills payable, repurchase agreements. That is the items which the directors of the bank and the other individuals borrowed from the First National Bank and put into the City National Bank and the records of the bank show that to be an obligation of the bank. You asked me several days ago to get up the whole thing, and that is what I am testifying to now, is the total; that includes the $100,000.00 at the First National Bank. In other words, if you want to know the bank, there would be $100,000.00 less in that total, because that $100,000.00 at the First National Bank is not an obligation of the City National Bank of Wichita Falls. I got this $1,100,000.00 from the books and records of this bank and the First National Bank here. It will take some time to get the outstanding obligation to the bank as of December 31, 1931,
the general ledger will show it, but the general
1262 ledger is set up in several different sections.

I have been testifying to some figures asked the other day which is not the same question you ask now. I have here the sheets out of the general ledger.

showing the bills payable as of December 31, 1931, the total owing of the bank at that time was $1,248,123.26, itemized it—bills payable, National City Bank, New York, $79,221.49; First National Bank, Wichita Falls, $50,000.00; Federal Reserve Bank, Dallas, $410,000.00; First National Bank in Dallas, $100,000.00; First National Bank, St. Louis, Missouri, $108,576.90, making a total of $747,798.39; rediscounts with Federal Reserve Bank, $500,324.87, making a grand total of $1,248,123.26.

Here is the ledger sheets, the First National Bank of Wichita Falls, October 10, 1931, the City National Bank, with the First National Bank of Wichita Falls, borrowed $150,000.00. The obligation of the City National Bank, they paid $100,000.00 on December 31, 1931, to the First National Bank in Wichita Falls. That is the day the directors bought some notes from the City National Bank. The memorandum, "trans" written after October 10, 1931, means it was a transfer. That means it was transferred from another sheet. I can explain it, he carried several different accounts along, and he would transfer them to the individual sheets—that is the bookkeeper, several different banks that had owed bills payable and set up bills payable all on one sheet, and he got so many that he transferred them to an individual sheet, that is where the word "transfer" comes
1263 in. The records show that the City National Bank paid the First National Bank of Wichita Falls, $100,000.00 on December 31, and reduced its liability to that bank to $50,000.00—I will describe the transactions between those banks as reflected; April 13, 1932, they borrowed $75,000.00, making a total of $125,000.00 they owed; on October 4, 1932, they paid $10,000.88, reducing the bills payable to $114,999.12; November 2, they paid $4,999.12, reducing the bills payable to $110,000.00; On November 29, they paid $9,923.39, reducing the bills payable to $100,076.61. On February 21, they paid $76.61, reducing it to even $100,000.00. On March 14, 1933, they borrowed $25,000.00, making a total owing of $125,000.00; On May 5, 1933, they paid $116,185.06, re-

ducing the bills payable to $8,814.94; on May 10, they paid $3,576.53, and borrowed $3,025.10, making a total of $8,263.51; On May 16, 1933, they paid $8,263.51, which closed out the bills payable at the First National Bank of Wichita Falls. Those items, beginning with the $150,000.00, the notes were indorsed, which was the only security, none of that was under the repurchase agreement. That shows the notes payable by the City National Bank to the First National Bank, Wichita Falls during that time. The repurchase agreements were not in addition to that, with the First National Bank—a part of these payments on this bills payable was a repurchase agreement that we gave them. After they gave us our bills payable credit for that and took this repurchase
1264 agreement into account instead of bills payable. So that some of the credits upon this sheet arises by reason of the City National Bank executing the repurchase agreement. The items covered by the repurchase agreement are in evidence, showing the items which the bank has repurchased.

I will hand to the commissioner the pledge agreement or repurchase agreements which were made and entered into by and between the two banks, First National Bank and City National Bank of Wichita Falls.

Mr. Rogers:

We offer those in evidence, "Defendant's Exhibit No. 132")

PARTIES OF THE FIRST PART.

FIRST NATIONAL BANK IN ELECTRA FALLS, TEXAS

BY _____ PRESIDENT.

Party OF THE SECOND PART.

D.EL132

11/45

1117

REPURCHASE AGREEMENT.

WICHITA FALLS, TEXAS.

NOVEMBER 17, [illegible]

THIS AGREEMENT, entered into by and between the undersigned, hereinafter called Parties of the First Part, and the FIRST NATIONAL BANK of Wichita Falls, Texas, Party of the Second Part:

WITNESSETH: That the Parties of the First Part have this day sold and delivered to the Party of the Second Part, for a consideration of NINE THOUSAND, NINE HUNDRED TWENTY-THREE AND 39/100 . . DOLLARS ($9,923.39), certain [illegible] Vouchers, as follows:

Archer City Ind. School Dist. "Available" Fund Vouchers . $1,000.00

"Maintenance" " " . 1,000.00

[illegible] Ind. School Dist.-State and County Vouchers . . . 1,5[illegible].00

Wichita Falls Ind. School Dist. Vouchers - $378.01
451.97 [illegible]

Wichita County Common School Dist. Vouchers -
Various Districts . . . . . [illegible]
$9,923.39

The Parties of the First Part hereby agree to repurchase on or before JANUARY 15th, 1938, and the Party of the Second Part agrees to sell the above described vouchers for a consideration of $9,923.39, together with accrued interest on the last mentioned amount at the rate of __% per annum from this date until the date of repurchase.

THE LANGFORD INVESTMENT CO.
TRUSTEE FOR P.P. LANGFORD'S
CHILDREN
By P. P. Langford
President.

PARTIES OF THE FIRST PART.

THE FIRST NATIONAL BANK OF WICHITA FALLS,

By [illegible]
PARTY OF THE SECOND PART.

The Parties of the First Part [illegible] purchase on or before August 1st, 1933, the above described notes and warrants and the Party of the Second Part agrees to sell the above described notes and warrants, or any part or parcel of said promissory notes, for the consideration of $116,736.49, which amount is to be paid in cash upon the delivery of the above named, together with accrued interest on the amount to be paid under this repurchase agreement at the rate of six per cent per annum from this date until the date of repurchase.

It is understood, however, that the amount to be repaid is to be credited with any amount actually paid on the principal of the notes or warrants above described upon the date of the receipt of such payments, and that the Parties of the First Part shall be entitled to a credit upon the total amount of said repurchase agreement for the amount of such payments that may be received, plus six per cent per annum from the date of the payment until the date of repurchase.

This obligation shall bear interest at the rate of six per cent per annum from the date hereof.

PARTIES OF THE FIRST PART.

THE FIRST NATIONAL BANK OF WICHITA FALLS, TEXAS

By _____ President.

PARTY OF THE SECOND PART.

1270 The Witness:

I do not know whether the $100,000.00 credit on the liability to the First National Bank was paid in cash or by repurchase agreement. I am of the opinion it was paid by check or draft, I would have to look it up to see, but it is not a repurchase agreement. I will have to look through all the drafts and see what we have.

As to the method used in paying the First National Bank of Wichita Falls, $100,000.00 on December 31, the records reflect that that was a debit and credit; in other words, the $100,000.00 that the directors signed, these notes were taken into the account of the First National Bank and credited on the obligation of the City National Bank. It is true that the directors, did not, in fact, put any cash as such into the City National Bank, but paid a debt of the bank by executing their note at the First National Bank, in this manner, they all got, on the same day, a bunch of notes for that $100,000.00. I did not have anything to do with the transaction, Mr. Harrell is familiar with it. There is no mention of the item of December 31, 1931, in the minutes of the Board of Directors. The nearest meeting of the Board of Directors prior to that is December 1. There was a meeting the morning of December 31. Also a meeting on December 8, but it has no reference to this matter. I have a resolution here authorizing them to borrow money, dated October 12, 1931. There is an authorization in the minutes to sell the bank's assets in December, 1931, this is a general authority on October 12, 1931.

1271 From time to time the books and records of the bank were examined by a national bank examiner. Two examinations were ma[illegible] in 1931 and two in 1932. None were made in 1933 of the old bank. An examination was made on December 30, 1932, and closed February 1, 1933, by H. B. Gilbert. He has been a local bank examiner here for ten or twelve years. The chief national bank examiner is Mr. Collier of Dallas, his initials are R. H. When the bank examiner comes in to make an examination of the ban, he seals every-

thing up, the vaults, cash, all the books and records, and starts in by counting the cash and running the notes, cash items as they get through checking they are released, and the bank examiner goes into the loan and discount department and examines all the notes in there and balances the bond account, verifies the money in other banks, it is just a general audit. He checks the value of the assets, and sometimes acquires the charging off of doubtful items. Inquires into whether or not there is sufficient cash reserve and cash on hand. Sometimes these examinations take a month, at the end of that examination, he makes a written report of his findings, and gets the directors to acknowledge in writing, a receipt of the copy of the report. Then he keeps a copy for himself and sends another copy to Washington, is my understanding. The signed copy is kept by the bank. Mr. Gilbert is competent, qualified examiner.

I have here the discount committee minutes for 1926 and subsequent years are available.

1272 I have already offered in evidence the action taken upon the $15,000.00 and $25,000.00 items, in 1926, as disclosed by the discount committee. From there on, there is no specific record of that item. I will show on the minutes of these sheets, all loans made and renewed on a certain, unless exceptions are noted below as unanimously approved. In going through here, there were no exceptions, therefore, it does not name those particular notes in there. Here is what happened. The note department would write up this stuff, they would come up ten days prior to their maturity, and they would be discussed and if they were not to be renewed would be an exception written on the sheet, and these sheets would come up in the note department, were on a blank piece of paper, and after these minutes were made they were destroyed. That was not a permanent record, it was just to go before the committee to show what had happened the day before and the notes would go up to be discussed to see whether they were going

to pass for them to be paid or what they were going to do with them.

The liability record of the Wichita Royalty Company shows the first renewal after March, 1926, of the Wichita Royalty Company's liability to the bank, is on April 23, the discount minutes show, the loans made and renewed yesterday in those paid, as well as partially paid, those maturing and not having attention and those maturing ten days hence were carefully gone over.

1273 The following approved loans were made April 22—that is the new loans. The next renewal was June 2, and a similar notation in the minutes. That same thing is true with respect to G. W. Peckham's obligation. Nowhere in the minutes does this particular item show it, and the record I had made up at that time was temporary and it has been destroyed.

I suppose the last day the City National Bank of Wichita Falls did business as a going bank was on March the first. There is a report here as of that date. The total cash and exchange on hand was $284,825.75, that is cash on hand, transit items, clearing cash in bank, cash reserve in Federal Reserve Bank, the part that represents the deposit with the Federal Reserve Bank is $109,414.26. The total liabilities on that day were $6,738,180.39. I have before me the financial statement of the City National Bank of Wichita Falls.

Mr. Rogers:

We offer it in evidence.

DEFENDANT'S EXHIBIT 133.

DEFENDANT EXHIBIT 133

CITY NATIONAL BANK

WICHITA FALLS, TEXAS

DAILY FINANCIAL STATEMENT

DATE

CASH & SIGHT EXCHANGE

Federal Reserve Bank,	Dallas	$3,341,426
5% Redemption Fund		50,000.00
		$103,414,267

BANKS, BANKERS & TRUST COMPANIES

First National	Amarillo	1,498,429
Cont. Ill. Bk. & Tr. Co.	Chicago	69,793
First Natl. in Dallas	Dallas	13,490,085
Ft. Worth National	Ft. Worth	13,487,222
First National	Houston	155,429
Fid. Nat. Bk. & Tr. Co.	K. City	94,427
National City,	New York	3,242,853
1st Natl. Bk. & Tr. Co.	Okl. City	4,447,832
First National	St. Louis	1,922,029
Exchange National	Tulsa	1,045,447
Fourth National	Wichita	42,529
		42,990,586

TRANSIT ITEMS

Transit Account	2,299,546
F. R. Clearings	18,014,422
Country Bank Overdrafts	1,031,164
Customers Checks Not Charged And Other Cash Items	46,092,299
CASH IN VAULTS	38,491,451
	132,509,881

TOTAL CASH & EXCHANGE $284,825,734

LOANS & DISCOUNTS

Bills Receivable	$497,261,811
Call Loans	
Bills of Exchange	
Trade Acceptances	
	$497,261,811

INVESTMENTS

U. S. Bonds Direct Obligations	$ 80,000,000
U. S. Liberty Bonds	90,250,000
Other Bonds and Stocks	75,341,747
Bonds Secure Postal Savings	187,000,000
Federal Reserve Bank Stock	5,000,000
Bank Building	30,000,000
Furniture and Fixtures	2,000,000
Other Real Estate	3,439,941
Banking	
Claims, Warrants, etc.	2,268,948
Other Assets	2,282,432
Customer's Bonds	86,000,000
Travelers Checks	4,291,080
TOTAL RESOURCES	$ 1,018,481,709

DEPOSITS

Individual	$ 1,[illegible]
Demand Certs. of	[illegible]
Cashiers Checks	[illegible]
Certified Checks	[illegible]
Expense Checks	[illegible]
Dividend Checks Outstanding	[illegible]
Banks, Bankers and Trust Co.	[illegible]
Due Federal Reserve, Dallas,	[illegible]
Letters of Credit	
Transit Account	[illegible]
City Bank Overdrafts	
TOTAL DEMAND DEPOSITS	$ [illegible]
Time Certs. of,	[illegible]
Savings Accounts	[illegible]
Postal Savings	[illegible]
TOTAL TIME DEPOSITS	[illegible]
TOTAL DEPOSITS	[illegible]
CAPITAL STOCK	[illegible]
SURPLUS	
UNDIVIDED PROFITS	
Reserved for Taxes, Accrued	
Reserved for Interest, Accrued	
Rediscounts Federal Reserve	$ 267,000,000
Bills Payable	[illegible]
Circulation,	1,000,000,000
Customers' Bonds	[illegible]
Travelers Checks	[illegible]
Other Liabilities	[illegible]
TOTAL LIABILITIES	[illegible]

GROSS EARNINGS:

Interest & Discount,	[illegible]
Exchange	[illegible]
Other Earnings,	[illegible]
Recoveries on charged-off Assets	[illegible]
	$1,490,784

EXPENSES PAID:

Salaries & Wages	[illegible]
Int. & Dis. on Borrowed Money	[illegible]
Interest on Deposits	[illegible]
Taxes,	[illegible]
Other Expenses	[illegible]
	[illegible]

LOSSES CHARGED OFF:

Loans and Discounts,	[illegible]
Other Losses,	[illegible]
	[illegible]
	[illegible]
DEFICIT	[illegible]
ADD to UNDIVIDED PROFITS	[illegible]
Treasury's Deposits	[illegible]
Loan Fds.	[illegible]
Today's Earnings	[illegible]
Interest Expense	

1123

1275 (Whereupon the witness was excused from further cross examination by the Defendant Wichita Royalty Company, until a later date)

E. E. SCANNELL, Recalled for further cross examination by Mr. Boone, testified as follows:

I have already testified that the properties owned by the Wichita Royalty Company were listed from one up to around one hundred. I think I testified the first property bought from George Peckham was the Grimshaw No. 71, but I was a little confused on that. I want to make this explanation. While George Peckham became the trustee officially on the first of January, or the second of January, 1923, as I remember it, there was some period in there in which Ross Robertson continued to act as trustee on matters of getting the thing straightened out and getting it operating under the new trustee. There was some property purchase in there along about that time. While the deeds show that they might have come from George Peckham and B. L. Fain, and Bill Peckham who were partners at the time and who were selling various royalty companies around here, it is a little difficult for me to tell whether it was bought by Ross Robertson, or whether it was bought by George Peckham—I cannot tell you because I do not
1276 have all of those details closely enough to be able to tell you where it did begin.

Our records show here that on payment of the Novotny and See in Kay and Noble County, Oklahoma, our No. 64, 65, and 66, shows that our first check was given on this property on the 29th of January for $3,510.00, that was in 1923. That the second check was February 13, 1923, for $4,500.00, and the third check, No. 1,263, on the 13th of March, 1923, for $4,075.50, making a total cost of $12,085.50. That property was bought after George Peckham became trustee, according to the first check and voucher number, whether there was a prior contract in existence for that royalty, I could not be sure. Here

is the data pertaining to that property. The notation on voucher No. 1,209 January 29, 1923 is "To apply on last payment of royalty interest No. 64, 65, 66, Tonkowa field, $3,510.00. I imagine the information on that voucher came from George Peckham. I signed the check, for the trustee.

Voucher No. 1,232, February 13, 1923, for $4,530.00, payable to B. L. Fain, the voucher reads, "to apply on last payment royalty interest, 64, 65, 66, to Novotny and See lease, and Tonkowa pool, principal $4,500.00, interest $30.00, total $4,530.00." I believe that information came from George Peckham, I signed the check for the trustee, it is indorsed "deposit to the account of B. L. Fain." I could not tell you who wrote that indorsement, I do not recognize the handwriting, it is not mine. It was paid on February 19, 1923.

1277 Voucher No. 1,263, dated March 13, 1923, in the sum of $4,129.84, payable to the City National Bank, reads, "To apply on last payment royalty interest No. 64, 65, and 66, in Novotny and See, Tonkowa pool, $4,075.50, interest $54.34, total $4,129.84." I signed the check for the trustee, it is indorsed "Credit account of B. L. Fain," and some initials on it. I know T. A. Keys, he used to be in the City National Bank. I could not tell you whether that is his signature or not. We obtained a conveyance from E. B. Chapman for that property dated February 15, 1923. There are three separate conveyances. This, likewise, is dated the 15th of January, 1923, from E. B. Chapman, the third conveyance dated January 15, 1923, signed E. B. Chapman. This property is not producing, the Novotny land has been out of production for some several years, and the See probably produces a few cents a month. I have not checked the total revenues from this property, but will be glad to do so.

The numbers as to these properties skipped around a good deal, probably the instructions were received, or otherwise they would not have skipped them. I received instructions from either Mr. Robertson or Mr.

Peckham, whoever it happened to be that was handling the executive end. No. 63 is a part of the Hattie Vaughan and likewise covers No. 60, 61, 62, and 63. That was due to the fact that there were four producing leases, it is divided into four different leases, each of them had a number. The first check issued on that was
1278 November 17, 1922. There were three different purchases in the Hattie Vaughan—it might have been the first buy. It was dated October 14, 1922, the numbers are 42, 43, 47 and 48. None of these were bought during Mr. Peckham's regime. I have one conveyance from Hattie Vaughan here on January 10, 1923. That is like I tried to explain to you, that that property, the deed was not executed on that until after the last payment was made, or it was the last payment that was made, or something of that nature. $15,000.00 was paid for the property acquired on January 10, 1923. The indications from the checks were that we purchased it somewhere about November 17, 1922, and that the final payment was made January 13, 1923, and the deed was dated from F. N. Jondahl to George Peckham as trustee of the Wichita Royalty Company on January 10, 1923. and it was a 1/32nd interest in the southwest quarter of Section 33, township 16, range 9 in Creek County, Oklahoma. The record also shows a memorandum I made for my own information that this property was sold by G. W. Peckham to Harry White, 2-1-28, for $6,000.00, which originally cost $15,000.00. This is the Hattie Vaughan, of which there is quite a bit in the record about. The deed I have on it, comes from F. M. Jondahl, banker at Bristow. Peckham and Fain purchased the properties, the contract escrow in the bank, and then sold out parcels of it. That is the Hattie Vaugha, which is 1/32nd. I do not think that $15,000.00 was all they paid for all of it. According to the check, I added
1279 them up just now, unless I made an error. The two Peckham boys and Fain were partners in trading and they sold a number of royalties and others around in town and they would go out and buy a piece

of property, probably buy an eighth interest, maybe as much as they had, maybe it was a part of it, and then they would come back and sell this company some of it and sell some to another and some to another, that is what I mean by that information. This property acquired on January 10, 1923, it was bought at the same time with all this Hattie Vaughan stuff, I think, rather, that is my recollection about it. In the whole deal these three purchases is 34, 30, 40, 41, 42, 43, 47, 48, 60, 61, 62, and 63. The indicates are that the first purchase was made on the first section of it in August, 1922. The next section was purchased in October, and the next in November, as I remember it.

Voucher No. 1,185 says, "To apply on last payment royalty No. 60, Hattie Vaughan, payment $3,750.00, interest $62.50, total $3,812.50." The check was made payable to B. L. Fain.

Check No. 1,190, dated January 13, 1923, the voucher reads, "To apply on last payment royalty interest No. 60, Hattie Vaughan tract, payment $3,750.00, interest $62.50, total $3,812.50." That information possibly came from Mr. Robertson or Mr. Peckham. I now turn to 1,185. It says, "To apply on last payment." Check No. 1,163, dated December 22, 1922, the voucher reads, "To apply on last payment of royalty interest No. 60, Hattie Vaughan, payment $3,750.00, interest $31.25, total $3,781.25."

Check No. 1,100, dated November 17, 1922,
1280 reads, "First payment on royalty interest No. 60, Hattie Vaughan Tract, Creek County, Oklahoma, $3,750.00." That was charged to No. 60.

The notation I have on this property, the deed came from Jondahl, the banker at Bristow, Peckham and Fain purchased the property on a contract escrow in the bank and then sold and parceled that out. No reference to that on the Wichita Royalty Company records, that is their personal business, and it is just a memorandum I made for my own information, since I begun digging into this matter. I will have to say that I can-

not say positively there was any contract on this, but that is my recollection. I knew in November and December, 1922, and January, 1923, that Mr. Peckham and Mr. Fain were going out and buying properties and parceling them out and selling them. This property was producing, I think we checked it up, and it ran up to the date of sale, $26,269.92, sold February 1, 1928. The sale entered on our books was $5,700.00. We never got anything for it, George Peckham got it. The indications are that he got it when this cashier's check was cashed, which was February 10, 1928. That is one of the items we are suing for. This is a photostatic copy of a cashier's check payable to W. C. Duncan, dated February 6, 1928, being Plaintiff's Exhibit 146. There were two of those sales, $5,700.00 each, one on Wilson and one on Hattie Vaughan. Our books do not show we got anything. George Peckham sold it, the deed was executed by him for the Royalty Company. I do not have the copy of the deed. I am under the
1281 impression that he told us when we drew the deed who to have it drawn to. As I recall, we entered up the sale at the price of $5,700.00. This happens to be in the handwriting of the boy that was bookkeeper that we had to do this work. We made the entry on May 1 for Wilson Royalty, J. E. 24, $5,700.00; May 1, Hattie Vaughan interest, J. E. 25, $5,700.00. This is the journal. Entry made in 1928. I knew in May, 1928, that he had sold that property for $5,700.00. I could not say that I ever asked George Peckham about the money, he was the boss and I was just an employee. This is one of the items I filed against his estate, in the original $19,000.00. I knew in 1928 that the property had been sold for $5,700.00. I don't know that I found out that George Peckham got this money until after we checked through the records, after he died, I couldn't tell you just how long. We begun to check up different items, and this was among them, that we had never received any money for. In 1930, I presented a claim to the administrator for $5,500.00. The original jour-

nal entry book has been misplaced somewhere, however, it is recorded in the ledger.

Another piece of property bought after George Peckham became trustee, is the Lumzy-Deer, our property No. 69. I don't think there was any other property prior to No. 60.

As to the $5,700.00 on the Hattie Vaughan, it seems to me when we made that claim, filed it, that we transferred it to the accounts receivable. We had it on the notes receivable account, and on June
1282 1, 1928, it was debited to the notes payable account, our journal entry No. 18, amount $11,400.00—that is notes payable account City National Bank Wichita Falls, Texas. I imagine Mr. Peckham instructed us to do that. The journal entry on that is in the book that is missing, journal entry No. 18. I do not know where journal entries Nos. 126, 127, 128, and 129 are, that is in the book that is gone. I am of the opinion that there is no such journal entries as those. I am sure I have seen the book since George Peckham died. I don't think I have had that book in my possession since this case started, the first thing when we came up here, we went to hunt for it, and I couldn't find it. I told Mr. Carson some time before that that I had misplaced it somewhere and could not locate it. There is only one ledger that is lost, I think Mr. Carson did not return it to us, because here is a photostatic copy of it, and we haven't seen it since. This photostatic copy covers the same period, I know we had all those ledgers up there when we were working on these books, and after it was photostated, I never saw it again. That book begins June 1, 1929. I have the record between May, 1928 and the time George Peckham died, this is the ledger, the journal entry book is the one I am telling you about that is missing. That is a photostatic copy of the ledger. I have in my possession the ledger from May, 1928, to 1929, but not the journal entries, this shows the journal entries in the books, debits and credits, both sides. Here is the credit side, and here is the debits, from page

to page. On one page here, June 1, 1928, for
1283 sale of Wilson and Vaughan Royalties, Journal Entry No. 1, $11,400.00, and opposite that I have June 1, 1928, Journal entry 18, $11,400.00 as a credit. I could not tell you who wrote "Notes payable" there, it has been put there recently, I am sure. That is Mr. Lambert's notation. The only reason we write anything in there at all is for a ready reference in case we want to glance at it. The notes receivable, $11,400.00, for the sale of Wilson and Vaughan royalty—there were not any notes that we ever had, we understood there were some, but we did not get them. I got that information from Mr. Peckham, along about the time the deal was made. Journal entry No. 18 would not show that, probably just recorded transactions. Journal entry No. 1 is from the previous years. The note would not show in Journal entry No. 18, it shows there how we disbursed the entry, transferred it. I do not have any notes for this property, did not get any, to my knowledge. I don't remember whether I ever executed a note, personally to the company or not, but I don't think so, if there is one in the record and you will produce it, I can identify it. This journal entry No. 18 would not necessarily reflect whose note it was. We knew who the deal was made to. I have looked for the Journal entry everywhere and have not found it. Journal entry No. 26, 27, 28, and 29, would be in the same book.

It is my recollection that no other property less than No. 60 was purchased by the royalty company after George Peckham was selected as trustee.

1284 Property No. 54, is the Tillson-Geeson, 1/16th interest in the norhwest quarter in the northeast quarter of section 32, Township 16, North, Range 9 east. I think the purchase price of that is in three checks, totaling $3,675.00. I think the conveyance must have been misplaced; it is a lease interest, overriding interest, I do not seem to have it here right now. This is the conveyance which you now hand me. The conveyance is dated the 16th of January, 1923, the first check, however,

is dated November 15, 1922, and the last check, No. 1,183, dated January 2, 1923. We did not get title to it until January 16, 1923, evidently B. L. Fain was holding it in trust for the company until that time. My recollection is we got nothing out of that property, I am quite sure it never produced any oil. I don't remember what we did with the lease, probably we charged it off, I will try to find it for you.

We made three purchases on the Ellis Holmes property, as I recall it, the first buy was No. 56, the first check given on it was November 20, 1922. We paid $75,000.00 out of money and oil, we gave checks on that property, $47,244.02. The next check is December 11, the next one December 20, 1922; the next one January 2, 1923; the next one January 8, 1923; the next one February 7, 1923; the next one September 29, 1923. I think there were other pieces of that property, and these checks recited cover those three pieces. Voucher No. 1,110, dated November 20, 1922, reads, "To apply on last payment of
1285 Royalty Interest No. 6, Section 34, Township 12, range 12, Okmulgee County, 80 acres operated by Black Oil Corporation." The amount of that check was $10,000.00. The next one, No. 1131, dated December 4, 1922, for $5,000.00 and says, "To apply on last payment of royalty interest in No. 56, Okmulgee County, $5,-000.00." The next check, December 11, 1922, No. 1,147 for $5,000.00, "to apply on last payment of royalty interest, 56, Okmulgee County, $5,000.00." The next check, No. 1,156, $5,000.00 dated December 20, 1922, says, "To apply on last payment royalty interest No. 56, Okmulgee County, $5,000.00. Check No. 1,176 is for $10,000.00, dated January 2, 1923, "To apply on last payment of royalty interest 56, Okmulgee County Royalty, $10,-000.00." Check No. 1,182, is dated January 8, 1923, and says, "To apply on contract last payment No. 56," and I have in pencil, "Ellis Holmes, Okmulgee County, $3,-332.12." Check No. 1,225, dated February 7, 1923, says, "To apply on last payment royalty interest 56, Okmulgee County, Oklahoma, $3,777.53." Check No. 74, September

29, 1923, says, "To apply on last payment Eagle Pitcher lease, Okmulgee County, Oklahoma." Mr. Black was the man from whom we purchased the interest, it seems to me like he was the original operator, and he sold to Eagle Pitcher and retained an overriding interest which we purchased. Nos. 101 and 102, November 14, 1923, being No. 101, "for purchase of oil lease on one-fourth royalty, Ellis Holmes tract, Okmulgee County, Oklahoma." This represents $2,818.94, principal, and eight percent
1286 interest from July 15, 1923, that is on the check, of $2,200.00, and check No. 102, dated the same day, reads the same way. Check No. 265, dated September 15, 1924, reads, "Final settlement of Ellis Holmes lease, south half of southwest quarter, thirty-four, twelve, twelve, 1/7th of 7/8ths working interest purchased from L. E. Black." I think we figured the production off of that particular interest was $27,642.70—I will supplement that by saying that does not include the money applied against oil payments, and nothing back of January 1, 1923, if there was anything, I think it went to October 31, 1933, when it quit producing. I think the runs have been withheld since that time. The property is still there as far as I know, I have never conveyed it, I think it is in the deed of trust to Guy Rogers and others, I don't know whether that property was sold under the mortgage or not, I will check it up.

The next property, No. 67, is the Ellis Holmes property, the deed is dated August 1, 1923, executed by W. H. Peckham before me as a notary public. $27,750.00 is the consideration. The first check was No. 1,216, dated February 3, 1923, for $4,000.00 and it reads, "First payment on purchase royalty interest north half, southwest quarter, section 34, 12-12." Payable to B. L. Fain. That is purchased from W. H. Peckham. My memory is that it was divided into three purchases, and there was one deed covering the whole entry. I found here the contract in typewriting. This check I just identified seems to be the first payment on No. 67. That is all the
1287 information I can give you. B. L. Fain is the seller and the Wichita Royalty Company is the

buyer. He paid for this property, $12,500.00, No. 67. I found that contract in the office files, since I started going into this matter, and it seems to tally with our records. On the back of the contract dated February 5, 1923, in bold letters written in pencil, "Royalty No. 67, purchased August 14, 1923," that is in the handwriting of the bookkeeper, my assistant.

Mr. Boone:

We offer the contract in evidence, Defendant's Exhibit 134.

DEFENDANT'S EXHIBIT 134.

State of Texas,
County of Wichita.

This Agreement entered into, by and between B. L. Fain hereinafter styled Party of the First Part, and Wichita Royalty Company, hereinafter styled Party of the Second Part.

Witnesseth:

Party of the first part agrees to sell and hereby does sell to Party of the Second Part for an agreed consideration of Twelve Thousand Five Hundred Dollars the following interest; 1/8 of the 1/8 fee royalty (which is equivalent to 1/64 of the total production), on the North 1/2 of the Southwest Quarter of Section 34, Township 12 North, Range 12 East, Okmulgee County, Oklahoma.

1288

Party of the Second Part agrees to pay to Party of the first Part for the above described interest the sum of Twelve Thousand Five Hundred Dollars as follows: Four Thousand Dollars cash receipt of which is hereby acknowledged: Four Thousand Dollars thirty days from date hereof: Fifteen Hundred Dollars Sixty days from date hereof: Fifteen Hundred Dollars ninety days from

date hereof: Fifteen Hundred Dollars one hundred and twenty days from date hereof. Deferred payments to bear interest at the rate of 8% per annum from date until paid.

It is further understood and agreed that all oil runs on the above described interest collected by Party of the First Part from December 7, 1922, shall be applied as credit to Party of the Second Part on the final payment recited above.

Party of the First Part agrees to execute proper conveyance covering above described interest to Party of the Second Part which conveyance shall be placed in escrow together with a copy of this contract in the City National Bank at Wichita Falls, Texas, to be held by said bank until full consideration set forth above has been paid; whereupon said bank is instructed to deliver said conveyance to Party of the Second Part.

Witness our hands this 5th day of February, 1923.

B. L. FAIN,
Party of the First Part.
WICHITA ROYALTY COMPANY,
By G. W. PECKHAM,
Party of the Second Part.

(On the back thereof in pencil) "Royalty #67, Paid Aug. 14, 1923."

1289 The Witness:

For No. 70, we paid $6,250.00. I hand you the copy of a contract between George Peckham and the Wichita Royalty Company dated March 5, 1923. I think that contract has been in my possession all the time, the same as the other contract of February 5. These contracts were not between G. W. Peckham and the royalty company, that is, W. H. Peckham.

Mr. Boone:
We offer it in evidence.

(Marked "Defendant's Exhibit 135" as follows:)

1290 DEFENDANT'S EXHIBIT 135.

State of Texas,
County of Wichita.

This Agreement entered into by, and between W. H. Peckham hereinafter styled Party of the First Part, and Wichita Royalty Company hereinafter styled Party of the Second Part.

Witnesseth:

Party of the First Part agrees to sell and hereby does sell to Party of the Second Part for an agreed consideration of $6250.00 the following described interest, to-wit:

1/8 of the fee royalty (which is equivalent to 1/64 of the total production) on the following described tract of land, to-wit: The North 1/2 of the Southwest Quarter of Section 34, Township 12 North, Range 12 East, Okmulgee County, Oklahoma.

Party of the Second Part agrees to buy and by these presents does buy the above described royalty interest for the sum of $6250.00 payable as follows: $2250.00 cash receipt of which is hereby acknowledged; $1000.00 due April 5, 1923; $1000.00 due May 5, 1923; $1000.00 June 5, 1923, and $1000.00 due July 5, 1923. Deferred payments to bear interest at the rate of 8% per annum from date until paid.

It is further agreed by both parties hereto that all oil run to the credit of the above described interest beginning at 7 A. M. on December 7 shall be credited to Party
of the Second Part upon final payment of the
1291 consideration mentioned above.

Party of the First Part agreed to execute proper conveyance in favor of Party of the Second Part covering above described interest which conveyance shall be placed together with a copy of this contract in escrow in the City National Bank of Wichita Falls, Texas, to be held by said bank until full consideration set forth above has been paid; whereupon said bank is authorized to turn over to Party of the Second Part said conveyance.

Witness our hands this 5th day of March, A. D. 1923.

W. H. PECKHAM,
Party of the First Part.
WICHITA ROYALTY COMPANY,
By G. W. PECKHAM,
Party of the Second Part.

(On the back in pencil) "Royalty No. 70, Purchase Paid Aug. 14, 1923."

The Witness:

I hand you another contract dated June 4, 1923, on the back of it has "Royalty No. 73" paid August 14, 1923." That contract was between B. L. Fain and Wichita Royalty Company, I have had it in my possession all the time. We paid $9,000.00 for property No. 73.

1292 Mr. Boone:

We offer this contract in evidence.

(Marked "Defendant's Exhibit 136" and reading as follows:)

DEFENDANT'S EXHIBIT 136.

State of Texas,
County of Wichita.

This Agreement entered into by, and between B. L. Fain hereinafter styled Party of the First Part, and

Wichita Royalty Company, hereinafter styled Party of the Second Part.

Witnesseth:

Party of the First Part agrees to sell and hereby does sell to Party of the Second Part for an agreed consideration of Nine Thousand Dollars the following interest: 9/40 of the 1/8 fee royalty (which is equivalent to 9/320 of the total production) on the North 1/2 of the Southwest Quarter of Section 34, Township 12 North, Range 12 East, Okmulgee County, Oklahoma.

Party of the Second Part agrees to pay to Party of the First Part for the above described interest the sum of Nine Thousand Dollars, as follows: $5000 cash receipt of which is hereby acknowledged, and $4000 four months from date of this contract. Deferred payment to bear interest at the rate of 8 per annum, from date until paid.

1293 It is further understood and agreed that all oil runs on the above described interest collected by Party of the First Part from December 7, 1922, shall be applied as credit to Party of the Second Part on the final payment recited above.

Party of the First Part agrees to execute proper conveyance covering above described interest to Party of the Second Part, which conveyance shall be placed in escrow together with a copy of this contract in the City National Bank at Wichita Falls, Texas, to be held by said bank until full consideration set forth above has been paid; whereupon said bank is instructed to deliver said conveyance to Party of the Second Part.

Witness our hands this 4th day of June, 1923.

B. L. FAIN,
Party of the First Part.

WICHITA ROYALTY COMPANY,
By G. W. PECKHAM,
Party of the Second Part.

(On the back in pencil) "Royalty #73, Paid Aug. 14, 1923."

The Witness:

This property is known as the Ellis Holmes property Nos. 67, 70 and 73, part of the Ellis Holmes farm. The file reflects we bought the property from B. L. Fain and W. H. Peckham, according to the contract. I will be glad to look and see whether or not I have the original contract. These checks I have given you all
1294 constituted the purchase price for these three tracts. No. 1,216 looks to be signed by B. L. Fain, I mean, indorsed, and signed by E. E. Scannell for trustee; 1,249 seems to be indorsed by B. L. Fain, 1,252 seems to be indorsed by B. L. Fain and under it W. H. Peckham. It does not look like B. L. Fain's signature. Those checks were all paid. The next two checks, April 2, 1923, both of them; one of them for $1,520.00 and one for $1,006.67, are payable to the City National Bank, each of them signed by E. E. Scannell for trustee. The voucher on these two checks, No. 1,281, dated April 10, 1923, the voucher reads, "To apply on last payment of royalty interest, No. 67, Ellis Holmes tract, Eagle Pitcher lease, Okmulgee County." And payment of $1,500.00, interest $20.00, total of $1,520.00. The payment is in typewriting. The voucher on 1,282, dated April 2, 1923, reads, "To apply on last payment of royalty interest 70, Ellis Holmes tract, Eagle Pitcher lease, Okmulgee County, Oklahoma, payment $1,000.00, interest $6.67, total, $1,006.67." The next check, dated April 5, 1923, was payable to W. H. Peckham for $1,011.34. The next check dated April 25, 1923, for $1,526.66, is payable to B. L. Fain. The next check dated June 15, 1923, for $1,020.00, is payable to W. H. Peckham. The next check, dated June 15, 1923, for $5,000.00 is payable to B. L. Fain. The next check, dated August 14, 1923, for $4,120.97 is payable to B. L. Fain, but it does not look like his indorsement. Under the indorsement is G. W. Peckham and it looks like
1295 George Peckham's writing. We have a notation on here which shows that it was deposited to the

credit of George Peckham. The next check dated August 14, 1923, for $1,033.33, payable to W. H. Peckham but indorsed by W. H. Peckham and under it G. W. Peckham, all in the same writing. It looks like George Peckham's handwriting. The next check for $1,560.00, dated August 14, 1923, payable to B. L. Fain, not indorsed by B. L. Fain, it is in his handwriting. B. L. Fain, and under it G. W. Peckham, looks like George Peckham's handwriting. Those checks should total $27,750.00 plus interest. The first contract price was the one dated February 3, for $1,200.00; the next one dated March 5, $6,250.00; the next one dated June 4, $9,000.00; which makes $27,750.00 plus interest. I do not have any title papers showing where and when George Peckham had any interest in this property, other than that Bill Peckham and George Peckham and B. L. Fain traded together at that time and were partners. George Peckham got part of the money. We are not suing for that money in this suit. The title came from W. H. Peckham.

Mr. Boone:

We offer the assignment in evidence.

1296 DEFENDANT'S EXHIBIT 137.

W. H. Peckham to Wichita Royalty Company.

Consideration $10.00 and other valuable considerations.

Conveying 38/80ths of all the oil and gas rights in, to or under the following described land situate in the County of Okmulgee, State of Oklahoma, to-wit:

The North 1/2 of the Southwest Quarter Section 34, township 12 north, Range 12 east.

Dated August 1, 1923.

50c in documentary stamps, canceled.

Duly acknowledged.

Filed for record on August 18, 1923, at 10:00 o'clock A. M.

Recorded in Book M 259, on pages 262.

The Witness:

I don't think we are suing for this tract of land. These checks were returned to us at the end of the month. That was the usual custom, when the checks would come back we usually made our entries from the checks. These checks were all paid and charged to our account in 1923, and returned to us during the same year, we have had them in our possession all the time. I do not think that George Peckham and Bill Peckham and B. L. Fain had a partnership, but I am quite sure they did trade together. I couldn't say whether they were interested in this sale or not, I do not know anything about the details. Properties, Nos. 67, 70 and 73, are not included and we are not seeking an accounting in this suit on those moneys. I think we received $10,081.56 as proceeds from
1297 this lease, up to January 31, 1933. I think the runs are tied up now. They were placed in the mortgage to Guy Rogers. Guy Rogers or anyone else has not got any proceeds out of this that I know of. Those properties have never been re-assigned to the company or the mortgage released. No assignment was ever had back from Guy Rogers or anybody else that I recall.

I now hand you assignment dated April 4, 1923, from W. H. Peckham to Wichita Royalty Company covering the south half of the southwest quarter, covering the one-quarter interest in the south half of the southwest quarter of section 74, township 12, north, Range 12 East which is acknowledged the 25th of April, 1923, we paid $23,250.00 for that, here is the check, dated February 8, 1923, payable to W. H. Peckham for $10,000.00, which is the first one, and No. 1,226, that does not look like his indorsement. The next check is for $3,020.00, dated March 7, 1923, No. 1,251, payable to W. H. Peckham and seems to be his indorsement. The next check is No. 1,292 for $1,520.00, dated April 9, 1923, payable to the City National Bank. The voucher on that check reads, "To apply on last payment of royalty interest 68, Ellis Holmes tract, Eagle Pitcher Lease, Okmulgee County, Oklahoma, payment

$1,500.00, interest $20.00." The next check is dated August 14, 1923, for $9,219.51, and is indorsed W. H. Peckham under it G. W. Peckham, both signatures being, or seeming to be G. W. Peckham's. All of these checks were signed by E. E. Scannell for trustee. They
1298 were paid by the bank and returned to me the next month, September, 1923, and have been in my possession all the time. We acquired the lease, or an interest from W. H. Peckham, in August, 1923, it is signed by him and filed for record on August 18. I do not think this is one of the pieces of property we are suing on, at that time I realized that George Peckham as well as W. H. Peckham were buying property and selling it to the company. Our check shows that property produced $17,659.23 up to 1-31-32, I could not tell you what it has produced since January 31, 1932. That property is also included in the mortgage to Guy Rogers.

Property No. 72 is the Tonkowa, Oklahoma, property, acquired from B. L. Fain. I took the acknowledgment of all three of these documents. We paid $20,625.00 for it. Those five checks have gotten misplaced, I can read them from the voucher, the checks are Nos. 1299, 1,319, 3, 20 and 36, all of them dated 1923. I don't think we are suing for any of that back. I have now found the checks, Property No. 72 was purchased under contract dated April 19, 1923, which was offered in evidence as Defendant's Exhibit 10. The check No. 1,299, payable to B. L. Fain for $10,000.00, no indorsement, the check was paid. The next check, $1,258.33, dated May 7, 1923, payable to B. L. Fain, and seems to be his indorsement. The next check dated June 16, 1923, No. 3, for $2,533.33, seems to be his indorsement. No. 20, dated July 6, 1923, for $2,550.00, payable to B. L. Fain and seems to be his indorsement. The next check dated August 2, 1923, for $4,627.11, payable to B. L. Fain and seems to be
1299 his indorsement. I do not think any of those items are included in the suit we are seeking to recover from the defendant.

Property No. 74, assignment from B. L. Fain dated October 16, 1923, covering 1/32nd interest in a certain piece of property in Navarro County, Texas, we paid for that property $5,000.00. The check is dated October 17, 1923, $2,000.00, payable to B. L. Fain. The next check is payable October 27, 1923, for $1,500.00, payable to B. L. Fain. The next check is dated December 3, 1923, for $1,520.00 payable to B. L. Fain. We are not suing for any of those amounts. I don't think George Peckham was interested in that one. B. L. Fain and George Peckham were dealing together, but I don't believe George Peckham had anything to do with it.

Property No. 75, has already been introduced in evidence.

1300 E. E. SCANNELL recalled for further cross examination by Mr. Boone, testified as follows:

You asked me for the Tillson-Geeson property No. 54, if it produced any oil; we carried that under the Lacy Held, and it did produce $4,077.63 worth of oil and our first entry, I think was January 1, 1923, and to 3-31-23, produced $1,747.11, and from June 1, 1923, to May 31, 1924, $1,252.24; June 1, 1924, to May 31, 1925, $553.26; from June 1, 1925, to May 31, 1926, $330.27; June 1, 1926, to May 15, 1927, $165.89; and from June 1, 1927 to December 31, 1927, $28.88, and there it stopped producing.

You also asked me to check the oil runs on the Black Royalty and I have written for that information. You asked me to find the original contracts to W. H. Peckham on the Ellis Holmes, and I have been unable to locate them so far.

I have not been able to find journal entries Nos. 18, 26, 27, 28 and 29.

Property No. 75, assigned from G. W. Peckham to the Wichita Royalty Company, conveying an undivided 1/64th interest in lots 13 and 14, in block 27, of the American Tribune New Colony Lands in Archer County,

Texas, dated April 22, 1924, which has $21.30 stamps on it, we paid $21,250.00 in cash for that property and $6,250.00 out of the oil, a total of $27,500.00. I canceled those stamps, that is in my handwriting. The first payment was made on February 2, 1924, out check No. 154, for
1301 $12,000.00, the check was payable to B. L. Fain and indorsed by him, but it is not in his handwriting, it is in mine. The check was paid February 2, 1924, and deposited to the credit of G. W. Peckham on the same date, according to our books, also the City National Bank books. I indorsed it, it has no body's signature on it except mine for the trustee. I indorsed it for B. L. Fain. I expect I took it over to George Peckham's office and handled it there. Evidently the bank required no other indorsement. I do not remember the individual circumstances of that particular check. I could not tell you who made out the deposit slip. Check No. 154 was drawn on the City National Bank and paid by them on the 2nd of February, 1924, and deposited to the credit of George W. Peckham, returned to the Wichita Royalty Company October 1924, and has been in their possession since that time. The voucher on that check No. 154, reads "To purchase of royalty interest in Tonkowa and Creek County, Oklahoma, Luncy Deere, Carmichael, Ceverlin, McDaniel and Gothrey, the amount is $12,000.00," that is in typewriting. Then we have an ink notation on the voucher that says, "See letter from G. W. Peckham to Wichita Royalty Company dated March 17, 1924. This money to apply on Wilson Royalty instead of above." I expect I had authority to indorse Mr. Fain's name on that check when I did so. I imagine both George Peckham and B. L. Fain understood about it, they were trading together, I did not forge anybody's name. I do not think I would indorse a man's name to a $12,000.00 check without his authority. Here
1302 is a deposit slip in George Peckham's handwriting on the 2nd of February for $12,000.00, which I imagine is that check, it is the same amount. On Mr. Peckham's deposit record February 2,

there is only one item of $12,000.00, so I think that is the deposit slip. It does not show that Mr. Peckham was dealing so heavily that he would likely have many deposits of that size on that date. This check does not have George Peckham's name on it. Nobody ever touched the check, as far as it shows, except myself. I will try and get you my bank account, I do not have it here. I would only be able to tell you this, I worked for George Peckham a long time and was subsequently associated with B. L. Fain and they knew me well enough to know that if there was any possible chance of me getting that check they would have said something about it, or I would not have worked for them all those years. Because I find a deposit to George Peckham's credit in that amount on that day, I am assuming that is the check, and I think that is a correct assumption. I know that I did not get the cash for that check, I know positively that I did not get cash or credit for my own account, nor did I get a cashier's check for it. During all this time, I don't remember that I had a cashier's check that exceeded a thousand or two thousand dollars.

The next check, 185, for $9,250.00, dated March 17, the voucher reads, "To cover difference in purchase price of Tonkowa-Deere Royalties, our check No. 154, and the purchase price of $27,500.00 for one-eighth of royalty on the Luke Wilson eighty, block 27, Ray-Massie, Featherstone & Staniforth leases. Total cash payment $21,250.00 to be paid from oil, $6,250.00. I have explained that. That check was given in the first place, that property purchased the Tonkowa Royalty and there was no delivery of the Tonkowa property and they applied $12,000.00 instead to the Luke Wilson Royalty, which explains the whole transaction, it makes up a total of $27,500.00. I knew at that time that B. L. Fain and George Peckham were trading, buying leases and royalties pro and con with each other and for the royalty company and transferring them back and forth. The transaction with the Luke Wilson covers one-eighth of the royalty on eighty acres out of lots 13 and 14, block 27,

1303

out of the Luke Wilson land; I think that is about the only piece of royalty that Uncle Luke sold and the deal was handled and the purchase was made by G. L. Fain, as I remember, and George Peckham together. B. L. Fain went to Kansas City and made the trade with him up there. I think that is all they got out of it. The entire deal was 1/8th royalty. They sold to the Tolowa and the Wichita Royalty, a King royalty, R. A. King, and Dr. Massey, is all divided up, all this full 1/8—I don't remember what they got for that portion they sold to Tolowa, I think that was in the record the other day. As I told you a moment ago, when Mr. Fain and I were in association together, there was so much pressure brought by the bank against him to get him to try to get me out in order to do what they wanted to do here, that I
1304 was forced to leave my association with Mr. Fain.

I could probably get you the information of what Tolowa paid for that, my memory is, I think it is in the record, it shows already that the consideration was $100,000.00, $50,000.00 out of oil. I think that is in the record. I know George Peckham and B. L. Fain were interested in the purchase. The indications are the first sale might have been the Wichita Royalty Company, inasmuch as they had paid $12,000.00 in February and subsequent sales came along in March. I was in the original purchase with Mr. Fain and Mr. Peckham to the extent of $2,000.00, in a $150,000.00 deal. I put up $2,000.00, had a two percent interest, I got back $2,880.00, which is all, as I recall. I will get a complete statement of that later. I have some information here you asked about heretofore; I have a check on your exhibit 58, March 19. I got a check $2,000.00; and your exhibit No. 60, I got a check for $880.00 from George Peckham, and I testified in the former trial, on page 624 of that record, that I borrowed from the Security National Bank, $2000.00 to put on this deal, and I reported on my tax return in 1924, $880.00 profit. Bill Peckham might have been interested with me in this stuff, I don't think Dr. Massie

was, I think he bought a half interest in the royalty afterwards. He bought some of the royalty, the same as the Tolowa, and Wichita and King, and the King Royalty Company, I think that is all they bought in. When B. L. Fain went to Kansas City to buy this royalty, George Peckham was associated with him, I don't think
1305 Doc Massie was, Bill Peckham might have been. They traded together. I was interested in this transaction.

I have never found the total amount received out of the one-eighth royalty they bought from Uncle Luke Wilson, it is not my business to find out. When George Peckham told me that was my part, I was satisfied. It shows here on the record we paid $27,500.00 for the property, paid $9,250.00 and $12,000.00, and $6,250.00 out of oil runs. It does not show that I got that money. It is signed by E. E. Scannell for the trustee, that is, the check is, and indorsed B. L. Fain, I wrote his name. If Mr. Fain thought I got the money, he would have asked the bank for a refund. I did not get that money. I do not recall whether this $12,000.00 was the item we are trying to recover from the bank and Mr. Harrell or not. The bank did not get credit for that check, neither did J. T. Harrell. The bank paid the check, and it was deposited to George Peckham's account, the deposit slip so shows. The Wichita Royalty Company got the property and it is very evident that George Peckham and B. L. Fain got the money. The check to George Peckham dated March 17, 1924, indorsed by him, and deposited to his account on March 18 shows his indorsement on it, and he got the money.

I did not carry any account in the City National Bank at the time of the item No. 154, for $12,000.00 was handled.

Mr. Boone:

We offer the check in evidence for $12,000.00, item No. 154, Defendant's Exhibit 138.

1306 DEFENDANT'S EXHIBIT 138.

(Check) Wichita Royalty Company, Wichita Falls, Texas, February 2, 1924. No. 154. "8" When properly indorsed pay to the order of B. L. Fain $12,000.00. To City National Bank, Wichita Falls, Texas, Wichita Royalty Company, Dep. to cr. of GWP 2-2-24, by E. E. Scannell for trustee. (Indorsed) B. L. Fain. Perforated Paid 2-2-24.

1307 The Witness:

About this time George Peckham and B. L. Fain were closing out this Tonkowa property. They made a profit on that.

Mr. Rogers:

We offer this check in connection with the one previously offered.

(Marked "DEFENDANT'S EXHIBIT 139" as follows:)

(Check) Wichita Royalty Company, Wichita Falls, Texas. "7" March 17, 1924. No. 185. When properly indorsed pay to the order of G. W. Peckham (Dep. to cr. of G W P 3-18-24) $9250.00. To City National Bank, Wichita Falls, Texas. (Signed) E. E. Scannell for trustee, Wichita Royalty Company. (Indorsed) G. W. Peckham. (Perforated) Paid 3-18-24. 7748.

1308 The Witness:

I don't know how much the Tonkowa property made, I think this particular deal in its entirety involved several different transactions, involves this check and the voucher on this $12,000.00 check, was originally issued for additional Tonkowa property, I think we were supposed to have gotten an interest in that. I think we made a number of sales on that amounting to considerable money, I would not be able to tell you how much. I think

George Peckham and B. L. Fain used to say that the Wilson Royalty was the largest transaction they ever made. The Tonkowa involved seventy thousand dollars, but it was bought in different pieces.

No. 40, the oil production from that lease was $25,476.00 up to the time of the sale November 25, 1927, which included the $6,000.00 oil payment, and the $6,250.00. As I understand it, Mr. Lambert and I are not in agreement on that, and I have agreed to re-check it with him, as soon as I have the opportunity. The sale price of this was $5,700.00, which is included in the $11,400.00, which I say on May 1, 1928, set upon our books, bills receivable. The ledger shows journal entry No. 18, $11,400.00 notes receivable, does not say who it is from. I am sure I do not have any note to the Royalty Company, I did not give the Wichita Royalty Company a note for $12,000.00. I told you I do not have journal entries 18, 26, 27, 28 and 29; when this thing first started, I told Bill Peckham to come over to the office and bring his auditor and satisfy himself as to everything that was in it, and I also
1309 brought these checks when the thing first started, and placed them before Mr. Harrell and the bank, and explained the situation to him, and if he thought there was anything wrong, that was the time for him to say. I did not do that before George Peckham died because I was not the trustee of the Wichita Royalty Company, and had no authority whatever only to do what George Peckham told me to do, and I think I did pretty well as he told me, because I worked for him a long time. All of these details I can't remember, I had other business I was connected with at that time.

I do not have any conveyance on property No. 76. Paid out $21,000.00 without expense, it says here that the check went to the Security National Bank. There are no indorsements on either of those checks. They are signed by E. E. Scannell for trustee, nobody's name on there except my own. That $21,000.00 went out of the company on my own signature. The money went to George Peckham. We may have had an assignment, but I don't

recall. When the property was closed out, we no longer owned it, and it was probably taken out of the file, I didn't see it any more if we had an assignment. Check No. 237, is Plaintiff's Exhibit 162, says, "To purchase an interest in lots 9 and 10, block 41, J. H. White lands Archer County, Texas, total cost $21,000.00, this check $11,000.00." I think George Peckham got the money on that, I have no way of showing, except the bank can tell you more about that than I can. I know I did not get that
1310 money. If you will produce George Peckham's bank statement from the Security National Bank, I expect you will be able to find it. I offered Bill Peckham, when this thing first started, to check everything for him and go into everything about it and allow him any privilege that they wanted to in regard to the audit of the books of the Wichita Royalty Company and see if everything was in shape. The check No. 237 was cleared in the Security National Bank on July 2, 1924, it may be July 3. Check No. 246, Plaintiff's Exhibit 161, was likewise dated July 24, 1924, for $10,000.00, payable to the Security National Bank, signed by E. E. Scannell for trustee, and does not show that anyone else handled it. The two checks, Plaintiff's Exhibit 161 and 162, had nobody's signature on them but mine. The transaction was closed out, and if there was any assignment for them, when the deal was closed out, it came out of our files, and I do not have anything on it now. The Security National Bank statement for the month of June, 1935, shows that on December 31, 1924, he had a balance of $6.42 in the Security National Bank; and that his closing statement of these three, March 24, 1926, he had $8,107.00 in the bank, and on May 10, 1926, the final balance was $121.37. I will do my best to find the account of July, 1924. I know George Peckham got this $21,000.00, check No. 237, dated July 2, was cleared by the City National Bank on July 3—I mean, by the City National Bank paid; that on July 3, that day, George Peckham deposited $11,321.82. Check No. 246, on July 24, paid by the City National
1311 Bank, on the 25th it shows that George Peckham deposited to his personal account, $10,000.00. I

think I read in Mr. Harrell's interrogatories that that is one of those checks. I want to say in regard to this transaction that when George Peckham sold this to the company, that he called me in there and I know about the deal and I made the check while I was sitting there—I don't remember about the assignment, but I think there must have been something about it that we got. I do not know that B. L. Fain had the lease, I think it was carried by B. L. Fain, and George Peckham had an interest in it together, they were trading together, I couldn't tell you whose name it was in. I was up at the office, and he told me to make the checks out. I think this instrument here is the assignment where the property went out of the Wichita Royalty Company, and we got our part of the money for it, I think perhaps it was held in the name of B. L. Fain. Teller No. 4 in the Security National Bank cashed the $11,000.00 check. This check which you now hand me was handled by Teller No. 7 in the City National Bank, and Teller No. 4 in the Security National Bank. The deposit is $11,321.82. This $11,000.00 check deposited in the Security National Bank was paid. Here is the original deposit of George Peckham, $11,321.00 in his handwriting, handled by teller No. 7, No. 7's name is not on the check for $11,000.00. If this $11,000.00 was not in currency, there ought to be some transaction from the records of the City National Bank to show what it was.

1312 Mr. Boone:

We offer the original deposit slip in evidence and ask that it be photostated, in connection with Plaintiff's Exhibit 162, marked "DEFENDANT'S EXHIBIT 140."

Deposited with City National Bank for credit of G. W. Peckham, Wichita Falls, Texas, 7-2-1924. Please list each check separately.

	11,000.00	
	321.82	"7"
Total	$11,321.82	

1313 Mr. Boone:

We also offer in evidence "Plaintiff's Exhibit 162" and ask that it be photostated in connection with this matter.

(Instrument marked "Defendant's Exhibit 141" as follows:)

DEFENDANT'S EXHIBIT 141.

(Check) Wichita Royalty Company, Wichita Falls, Texas, July 2, 1924. No. 237. When properly indorsed pay to the order of Security Nat'l Bank $11,000.00. To City National Bank, Wichita Falls Texas. Wichita Royalty Company, (Signed) E. E. Scannell for Trustee. (Indorsed) ..... (Perforated) Paid 7-3-24.

1314 The Witness:

Teller No. 4 handled the check of $10,000.00, No. 264, Plaintiff's Exhibit 161; the check was deposited to cash in the Security National Bank and went through the clearing house on July the twenty-sixth; when I take up a deposit in George Peckham's account of $10,000.00, I do not say it was that check, I say it was that money. I account for it in this way. George Peckham went over there and got a cashier's check, or something, and brought it back and deposited in the bank on the 25th; this check was made out on the 24th and it was dated the 24th and it was cleared on the 26th. That ought to leave him plenty of time to get the cash, or a cashier's check, or whatever it might be that he got for that $10,000.00. You now hand me the original deposit slip for $10,000.00, which was not paid before the check cleared on the 25th, handled by teller No. 6. I did not get this money.

(Defendant's Exhibits 142 and 143, as follows:)

DEF. EX. 142.

(Check) Wichita Royalty Company, Wichita Falls, Texas, July 24, 1924. No. 246. When properly indorsed pay to the order of Security Nat'l Bank $10,000.00. To City National Bank, Wichita Falls, Texas. Wichita Royalty Company, By E. E. Scannell for trustee. (No indorsement.) (Perforated) Paid 7-26-24. "4".

DEF. 143.

Deposited with City National Bank for credit of G. W. Peckham. Wichita Falls, Texas, 7-25-1924.
$10,000.00.

1315 The Witness:

Neither of these checks for $11,000.00 and $10,000.00 July 2 and 24, respectively—being the exhibits heretofore referred to, were not deposited in the City National Bank, but in the Security National Bank and cashed by that bank. If they were deposited, they would have shown in the name of somebody there. A cashier's check, if it had been obtained, would show in somebody's name. I have told you positively that I did not get this money and George Peckham did get it.

I hand you an assignment from B. L. Fain to Wichita Royalty Company dated February 20, 1925, covering 1/64th of the oil and gas on one hundred acres in Archer County, Texas. We bought this property as well as 1/8th of the royalty, dated December 15, 1924, on thirty acres of land in Archer County from B. L. Fain, to the Royalty Company. On December 4, 1924, we gave our check No. 309, on which the voucher reads, "In payment of royalty in Hayter lands in Archer County, 1/8 royalty in thirty acres, 1/8 of royalty in one hundred acres." I think George Peckham had an interest in that. The check is made payable to B. L. Fain and indorsed by him. George Peckham's name is nowhere on the check. E. E. Scannell

signed the check for trustee, that is me. Oil runs were obtained from this property, we checked up to April 30, 1932, $2,908.54. I think we still own that property, but I am not sure whether it is producing, or has been withheld.

Looking on the record, from January 1 to April 30, we got $25.32, so it looks like it is still producing, a very small amount. I will look it up for you. I do not think
1316 we sue for property No. 77 in this case.

Property No. 78, assignment from F. O. Harrell to the Wichita Royalty Company, Plaintiff's Exhibit 190, already introduced in evidence, covering one 1/128 interest in one hundred and twenty-five acres in Archer County; we got the assignment from F. O. Harrell. We made our check No. 317 to G. W. Peckham and the voucher reads, "To purchase one sixteenth of one-eighth royalty in one hundred twenty five acres known as block 46, of the Mead M. L. Pasture subdivision of the B. G. Thomas Survey, Abstract 458, Archer County, Texas. Amount $695.00." We got the assignment on December 16, it is acknowledged before me. It is filed for record on December 24. The check was issued on December 23. I do not know what George Peckham paid for it. As far as I know about this property we got it from George Peckham. I have had that assignment in my possession all the time, for this property. It is not from George Peckham, but F. O. Harrell. The indications are that when I took this acknowledgment of F. O. Harrell, I should have known that the property was coming from him. In regard to accusing George Peckham of fraud, I wish to say this: I did not file this suit only on the $19,000.00 to start, and the suit was originally brought by the City National Bank and not by me. I am defending the suit for the interest of the Wichita Royalty Company. The Supreme Court of the State of Texas said what George has done, he is guilty of fraud, and if that is guilty of fraud, it is ok. I did not keep
1317 a notary public record at the time I took Mr. Harrell's acknowledgment December 16, 1924.

The check was made to George Peckham and deposited in the City National Bank to his account. I did not investigate to see whether or not he had paid F. O. Harrell. This is among those properties that are repudiated in regard to this suit. It bears a revenue stamp of $1.00, and shows it was more than $500.00. I did not cancel the revenue stamp, I do not know F. O. Harrell's handwriting, I know his signature. The stamps were canceled December 23, 1924. I think we have had that in our possession since it was turned over to us, December 23.

Mr. Rogers:

The check is Plaintiff's Exhibit 189, and the conveyance is Plaintiff's Exhibit 190, heretofore offered in evidence.

The Witness:

This property produced a little oil, our records show we got $38.25 off of it. Mr. Lambert checked it and said we got $69.50. It is among the repudiations that we have given in regard to this suit.

Property No. 79, Plaintiff's Exhibit 172, covers 1/16th of the oil, which is one-half of the Royalty under 117 acres in Archer County, Texas, dated June 20, 1925, signed by J. H. Massie and George B. Rhea to the Wichita Royalty Company. Revenue stamps 50c. The consideration is $10.00 and other considerations. As far as that property being bought from George Peckham, our check dated May 5, 1925, No. 373, to George Peckham, to purchase of one-sixteenth of the royalty in the
1318 Routon land, one hundred and seventeen acres in Archer County, purchase price $2,500.00. I think that is the Isaac Holman lease. There is no way of knowing exactly when we got the assignment, except it is dated June 30, 1925, and acknowledged June 30, 1925, filed for record November 5, and recorded on January 12. We paid for it on May 5, 1925, by giving George Peckham a check for $2,500.00, being Plaintiff's Exhibit 170, our check No. 373 Plaintiff's Exhibit 173 is a check dated May 5, 1925, "Pay to the order of Ray and Massie, $2,-

500.00, for one-twelfth interest in deal with Allen, Moran, Routan land." The same amount of money we gave him. However, the interest is different, the check says one-twelfth interest and we got a one-sixteenth interest. This is G. W. Peckham's check signed by G. W. Peckham in his handwriting. Paid on May 6, 1925. The indorsement reads, "Deposit to the credit of Ray and Massie." I do not know whose handwriting Plaintiff's Exhibit 173 is in. This is one of the pieces of property that we sue on in this case. We got some oil off of that, I think we got $419.23, and the last we received was for the period 6-1-30, to 11-30-30, and for that period, about five months, we got $2.80, I think possibly the property was abandoned. However, I will check it and find out. I know the Routan land, I do not know how much that deal was, I have no way to find out. If that is the same deal George Peckham paid out the same amount that we gave him on the day he gave his check, that is the first time I ever saw it,
1319 when it was introduced in evidence the other day. The Wichita Royalty Company's check was made on May 5, and George Peckham's check was made on May 5. I have had this check of George Peckham's ever since it was returned from the bank, it is dated May 5, Plaintiff's Exhibit 173. I did not trace the title of this Routan land to see how much was bought. It is in the repudiated transactions in this suit. I do not know whether it was one-sixteenth or 1/12th, I do know that George Peckham's check was made for $2,500.00 on the same day our check was made for the same amount, and his check is made payable to the same people that gave us the 1/16th royalty.

Property No. 80, assignment from G. W. Peckham to Wichita Royalty Company, dated July 1, 1925, Plaintiff's Exhibits Nos. 174 and 175; another assignment from G. W. Peckham to the Royalty Company dated July 20, 1925, being 1/16th royalty in some five tracts of land in Archer County. Property No. 80 is called the Anderson property. I have had these assignments in my possession and with the royalty company since September, 1925.

One of them recorded on September 23, the other on September 28, 1925. These instruments have been there for the inspection of the Wich[illegible] Royalty Company, and I guess any stockholder could have seen them who wanted to. The first check No. 385, is in evidence as Plaintiff's Exhibit 179. The voucher was not on the voucher check the amounts were on there, and it looks like the information was secured subsequently. As far as the check is concerned, it just shows $6,000.00 for the blank
1320 voucher. We evidently secured the information somewhere between June 24, and June 29, because when the next payment is made, it is all carbon and that would be Plaintiff's Exhibit 180. I probably got the information when I went to George Peckham's office after he called me. The first assignment I got for four pieces of property dated July 1, 1925, the next one July 20, 1925; the first one recorded on the 28th of September and the next one on the 23rd of September, the chances are we didn't get them until that time, just prior to that time. I do not know what George Peckham paid for that property, nor who he purchased it from. We have checked up on that property and it has paid $10,174.51. The last payment we got, January 1, 1932, to March 31, 1936, we had two checks, one for $706.04, and one for $941.00. I don't think we have gotten anything since 1936, we still have the property. I imagine the oil runs are held up. I don't know whether this property is included in the mortgage I gave to Guy Rogers and Charley Black or not.

Property No. 81 is part of this check No. 427. The assignment is here somewhere, in evidence. I now hand you assignment from A. J. Mathis and L. Mathis, dated October 14, 1935, being Defendant's Exhibit 18, to the Wichita Royalty Company for $2,500.00. Revenue stamps $2.50. I gave George Peckham a check on October 8, 1925, being my check No. 427 and being Plaintiff's Exhibit 57, for $5,500.00, which went for the purchase of this property. Our voucher on check 427 reading, "Property No. 81 to purchase one-fourth of royalty of the east

thirty acres of 71 acre tract out of the D. Milligan Survey, Callahan County, Texas, $2,500.00." It was a part of the check for $5,500.00. There was other property connected with this check for $5,500.00, property No. 82, to purchase of 1/8 of the royalty of the east half of section 4, B. B. B. & C. R. R. Co. Survey, Certificate 692, 320 acres, Archer County, Texas, $1,500.00. The Dietrich property, additional interest not given, to be accepted on approval of title, making up the amount of $5,500.00. Number 82, is the assignment from B. L. Fain to one-fourth interest in oil and gas in Archer County, Texas, dated October 9, 1925, just five days before the other one was dated, and bears revenue stamps, $1.50 on it. That is on the Kunkle and Dietrich. That makes $4,000.00. That is one of the properties we are suing for here, the Callahan property, as is also the Mathis. Callahan property deed was filed of record on the 23rd day of October, 1925, and the Dietrich and Kunkle November 12, 1925, we have probably had those since these dates. This check for $5,500.00 for these properties was signed by me for the trustee, payable to the City National Bank, and George Peckham's name is not on it. The money was credited to George Peckham on October 8, 1925, the day of the cancellation. I had no way of finding out what George Peckham did with the money. I have no way of knowing whether the deed from Mathis came through the First National Bank or not, except from the testimony that was offered here the other day by Mr. Carson. This check, Plaintiff's Exhibit 49, signed by George Peckham, $2,252.25, was payable to the First National Bank. The check dated October 20, 1925, for $2.50 for revenue stamps, was given by George Peckham. We called the Massie property the Callahan property, that is the way we distinguish it, and I believe it is located at Cross Plains, or somewhere near there. In the month of October, 1925, George Peckham gave C. A. Rogers a check for commission on Cross Plains property, $225.00. The titles were examined by E. C. DeMontel, and we gave him a check for $71.00,

dated November 3, 1925. I am not acquainted with this remittance letter of $2,250.00 from the First National Bank, which you now hand me.

Mr. Boone:

We offer it in evidence and ask that it be photostated, DEFENDANT'S EXHIBIT 144.

To First National Bank, Wichita Falls, Texas, Oct. 16, 1925.

Stockyards National Bank,
Fort Worth, Texas.

All enclosures on this sheet are handled by us as cash, and are sent you for Prompt Remittance.

Do Not Protest items $10.00 or less or those bearing this stamp or similar authority from a preceding indorser. No Pro. 37-12.

Wire non-payment items $500.00 or over.

5	5.00*
10.20	5.00
16.34	46.00
.22	168.01
.22	356.37
	47.50
	49.87
4	1,314.96
10.20	2,250.00
37.27	4,242.71
2	1.514.00
	5.756.71

1323 The Witness:

This check from B. L. Fain for $1,500.00, "Sale of Kunkle Royalty," indorsed by B. L. Fain, dated November 12, 1925. The assignment is dated October 9,

1925. Filed for record November 12, 1925, the same day the check was made, for $1,500.00. The same day we filed our instrument of record, and adding $1,500.00 to $2,500.00, that is the approximate amount, gives $4,004.75. Also I have here check dated November 6, 1925, from G. W. Peckham to Wichita Royalty Company, it went to the credit of the Wichita Royalty Company, and says, "Deposit only, G. W. Peckham, trustee Wichita Royalty Company." The check was given November 6, and paid November 10, 1925. Our books show a receipt for that money. In our ledger we have an entry referring to our cash memo No. 148, dated November 10, in the amount of $1,500.00, the memo recites, "money refunded on producing royalty which was not used as additional royalty interest, was not secured. Check No. 427." That is a check for $5,500.00, it was written at the time the entry was made, November 10, 1925, and that has been in my book all the time. He accounted to us for $1,500.00, and I have the carbons for the others. I do not think I overpaid him, nor did he overpay. It shows that on our record we gave him check No. 438, for revenue stamps, with the royalty deed, property No. 81, and exchange on that draft on Property 81, dated November 6, for $4.75, to G. W. Peckham. Adding the $1,500.00 to the $4,000 and some odd dollars, would give $5,504.75, and taking away the $4.75 would be $5,500.00. We repudiated the Callahan transac-

1324 tion in this record, as I understand it, it is our option to keep those that we wish and to return those that we do not wish. This indicates that he accounted for every dime in that transaction, our records account for $5,500.00. We got the Callahan property from George Peckham.

Mr. Rogers:

We object to his conclusions. This exhibit 18, photostatic copy in the record, speaks for itself, and the witness cannot vary that which it recites. The testimony affirmatively showing that the grantee's name was written in with a different typewriter than the other, and while

there is no allegation of theft in the petition, there is an allegation that G. W. Peckham could not trade with himself as an individual and himself as trustee, nor could he, on the 14th of October, 1925, purchase in his own name a blank assignment and pay therefor at a subsequent date, by honoring the draft therefor, out of his own funds, and later by inserting the royalty company's name therein, at a time in the fluctuating history of the oil property, and assignment of it to his personal interest, and give this property to the royalty company, while the books of the company were caused by him to balance. And while it now is sought to be shown that he paid as much for the property as he received from the royalty company therefor, such is not the point involved in the litigation. It is a question of whether G. W. Peckham could trade with himself as trustee in the territory of fluctuating value of
oil property, carrying it in his own name for a
1325 period of time and then when his own best interest dictated, he conveyed it to his trust, for the money he had been out.

(Which objection was by the Court overruled, to which the Defendant, Wichita Royalty Company then and there excepted.)

The Witness:

It seems like there was some kind of activity around in the territory where this Mathis property was located. I don't know whether anything happened to that property between the time he purchased it and the time that he paid for it to make it less valuable. That is the first item in our petition, the first item check No. 467.

I think the Kunkle royalty produced $9,494.67; we made a profit on the Kunkle royalty of $8,094.67. We are not offering that back in this suit. As I understand, Mr. Peckham is entitled to credit for anything he has coming and we are entitled to credit for anything we have coming—I mean the bank is entitled to credit, and that we are entitled to credit where we have anything coming. As I

understand it, I am entitled to have my option on accepting or rejecting these properties. It is not my option, I am acting for the trust. If I think it is to the best interest of the trust to tender it back, I tender it back, and if it is not, I keep it. I am not willing for the defendant, or George Peckham to have $8,094.67 profit on the Kunkle Royalty, we are keeping this property.

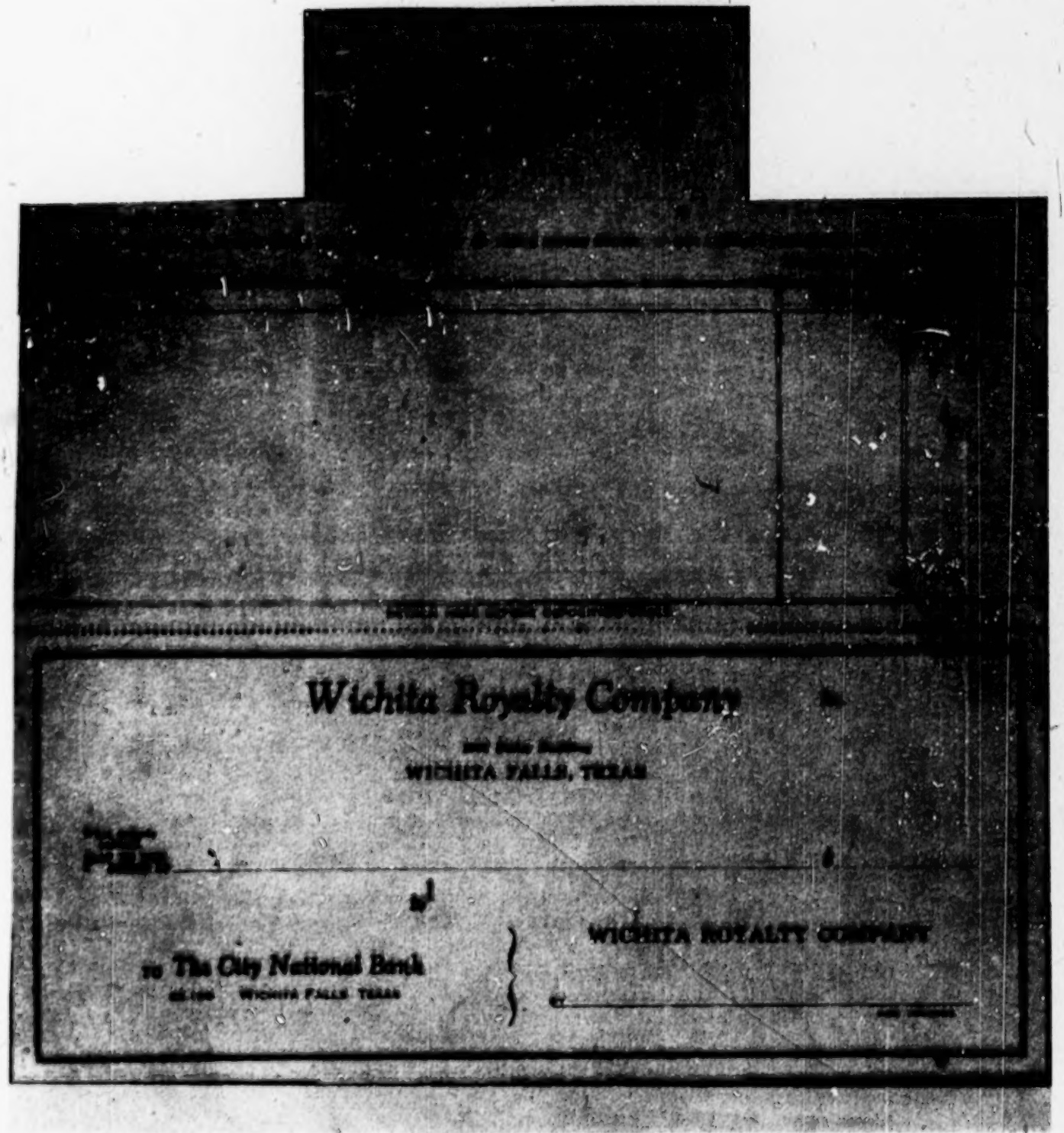
1326 Cross Examination.

By Mr. Humphrey:

What I hand you now is a copy of the present blank voucher from which we use in making these checks, and I think it is the same as we have used ever since we started in business, prior to Mr. Peckham's administration. The remittance advice is printed, and is on the perforated part which is separated from the check, it says, "Attached hereto is our check in full settlement of items listed below, if not correct, please return with explanation." Then it continues a printed description in detail. This is a voucher book in blank, and afterwards they are fastened together. During all of the time that I have been connected with the Wichita Royalty Company, we have made duplicates of checks and vouchers except as to the printed portion, that is, if we had the information at the time. The carbon is just an ordinary blank sheet of paper behind it, and it says, "Detach here before depositing this check." That is on the perforated line. Perhaps some of these came through the bank without being detached, but most of them were detached, whoever got the check retained the remittance advice.

Mr. Humphrey:

We offer it in evidence and ask that it be photostated, Plaintiff's Exhibit 193.


Wichita Royalty Company
WICHITA FALLS, TEXAS
To The City National Bank
WICHITA FALLS TEXAS
WICHITA ROYALTY COMPANY

1328 Re-Cross Examination.

By Mr. Boone:

Property No. 83 is the Porter Ranch, Item No. 2, in our petition, the first item, $1,250.00, on Page 7, check No. 451, that is one of the items we are suing George Peckham for. The voucher notation on check No. 451, December 28, 1925, City National Bank, $1,250.00, producing royalties, then it has a pencil notation which says, "No. 83, M. L. Porter Ranch." I imagine that pencil notation was put on there shortly after the check was written, as soon as we had secured the information. There is no conveyance to that property, as I understand it, it was a trusteeship in which Mr. Harrell and Mr. Basham and Mr. Harry Hines, and Mr. Knight were trustees, I never read it. The property was never in J. T. Harrell's name that I know of. The check for $1,250.00, Plaintiff's Exhibit 56, was credited to the account of G. W. Peckham. I couldn't tell you in whose handwriting, it is not mine, probably someone connected with the bank. I do not know whether this check was given to Knight and Hines for this royalty shown by Plaintiff's Exhibits 58 and 59 or not. Plaintiff's Exhibits 58 and 59, totaling $1,250.00 are signed by G. W. Peckham, and paid, the check was paid on December 21, 1925. There is the indorsement of Knight and Hines, W. T. Knight, by A. H. Heron, he is Mr. Knight's bookkeeper. The check for $50.00 is paid January 2, 1926, and is made to Knight and Hines for that amount; there is a pencil scratching on the back that I don't think it has
1329 anybody's indorsement on it. I do not know the signature of Bill Knight. The notation on the check for $1,200.00 says, 1/8th, one thousand—A, Archer County acreage, Porter land. On Plaintiff's Exhibit 59, the indorsement says "Balance cash payment on one thousand acres Archer County, Texas." These exhibits 58 and 59, are for the exact sum of checks 451, Plaintiff's Exhibit 56, of $1,250.00, if that is what they are given for, one of them is, I would not be sure about the other. That is the one for fifty dollars; it does not say anything about the

Porter Ranch, just says one thousand acres. The first one says, one thousand acres, one-eighth, and the second one says the balance on one thousand acres, both in Archer County. Both of them given before we gave our check to the City National Bank, which was credited to George Peckham. Both of these checks are payable to Knight & Hines.

Mr. Rogers:

We renew our objection heretofore made, to Plaintiff's Exhibits 58 and 59, in that it affirmatively appears from the record that the $1,250.00 evidenced by the two checks was paid by G. W. Peckham to Knight & Hines, and that the deed to the Porter Ranch, prior to any connection therewith by Wichita Royalty Company, or its issuance of check 451, to be vested in Knight & Hines, J. T. Harrell, G. W. Peckham and others, and that it was the individual property to the extent of an undivided 1/8 in G. W. Peckham and it is no defense to the royalty company suit, that G. W. Peckham as an individual
1330 some ten days later, made a trade with himself as trustee, whereby he caused the trust books to show that it had been sold to the Wichita Royalty Company. The rule depriving G. W. Peckham of any power of authority to bind the trust by said dual dealing.

(Which objection was by the Court overruled, to which the defendant, Wichita Royalty Company then and there excepted.)

The Witness:

Knight and Hines were connected with what is known as the Consolidated Oil Company, I think they were. I do not know when the opinion was finally written on the Porter Ranch.

Mr. Rogers:

The further objection in connection with that objection that the declaration of trust which constituted the charter

of the powers of G. W. Peckham, affirmatively required that any property acquired or to be acquired for or on behalf of the trust, should be held and carried in the name of the trust as such, and not in the name of any individual firm or corporation or other trusteeship or corporation, and it was beyond the power of the trustee to bind the trust by taking title thereto in his own name and paying therefor with his own money, later, without a deed of conveyance or other memorandum in writing, whereby his estate could be bound to enforce a trust thereon, in the event the property proved valuable, collected sums of money from the trust.

(Which objection was by the Court overruled, to which the Defendant, Wichita Royalty Company then and there excepted.)

1331 The Witness:

The deed you now hand me is dated December 1, 1925, and acknowledged the same day, filed for record December 28, 1925, the same day I gave our check to the City National Bank for $1,250.00. As soon as we got that information we put it on there.

Mr. Boone:

We offer the deed in evidence, Defendant's Exhibit 145.

DEFENDANT'S EXHIBIT 145.

Warranty Deed with Vendor's Lien, single and wife's separate acknowledgment.

M. L. Porter and wife, S. J. Porter, to W. T. Knight, Harry Hines, J. T. Harrell, C. E. Basham, W. L. Robertson Geo. W. Peckham.

Consideration $32,100.00, as follows:

$10,000.00 cash paid.

Note No. 1 for $7,366.66, dated December 1, 1925, payable on or before one year from date.

Note No. 2 for $7,366.67, dated December 1, 1925, payable on or before two years from date.

Note No. 3 for $7,366.67, dated December 1, 1925, payable on or before three years from date, all notes bearing eight percent interest from date.

Conveying the following described land: Beginning at a stone marked P. J. B. for an inside corner of the Peter J. Bailey survey; Thence South 950 varas to the S. E. Corner; Thence North 89-25 W. 951 varas, a 1332 stone for the Southwest corner Peter J. Bailey Survey, Abstract No. 30: Thence West 1941 varas to stone in road, the Southwest corner J. Pointevant Survey No. 1, Abstract No. 348; Thence No. 0-30W 1600 varas to the Northwest corner of the J. Pointevant survey; Thence East in center of road 960 varas to inside corner; Thence North 457 varas to Northwest corner, a fence corner; Thence South 89-43 East along fence 1020 varas to corner; Thence North 25 varas to corner; Thence East 1295 varas to Northeast corner, in west line of Effie Stanford land; Thence South 1134.4 varas to South line of Peter J. Bailey Survey; thence West 345.2 varas to place of beginning, and containing 1070 acres.

The respective undivided interest of the above named grantees, in the land described in this instrument is as follows:

$32.50 in documentary stamps, attached and canceled.

Harry Hines	1/4 interest
W. T. Knight	1/4 interest
J. T. Harrell	1/8 interest

C. E. Basham	1/8 interest
W. L. Robertson	1/8 interest
Geo. W. Peckham	1/8 interest

Dated December 1, 1925.

Duly acknowledged.

Filed for record December 28, 1925, at 10:00 o'clock A. M.

Recorded January 20, 1926 at 10:10 A. M. in the records of said county, Volume 104, page 634.

1333 The Witness:

I don't know whether I knew that property was in the name of Knight & Hines or not. I had nothing to do with it. On the voucher it says, "M. L. Porter Ranch. Producing royalties." In pencil it says, "No. 83, M. L. Porter Ranch." I thought we did not get any title to it in writing, in fact I know we didn't. I don't know whether I knew who carried it or not, that was not any of my business particularly, I made the entries there I was told to make, and that is about the extent of it. I don't know whether I testified that I knew it stood in the name of Knight & Hines or not. If I knew about it, I still say that it was carried in Mr. Knight's name, I don't remember, but I was under the impression that it was held by someone, just how it was held, I don't know. As far as I knew, it was ours, the royalty company asserted ownership in it. The receipt you now hand me is dated December 15, 1925, acknowledge receipt in the sum of $10,000.00 by M. L. Porter.

Mr. Boone:

I offer it in evidence, Defendant's Exhibit 146.

DEFENDANT'S EXHIBIT 146.

December 15, 1925.

This will acknowledge the receipt this day of the sum of $10,000.00, being cash consideration as stated in warranted Deed of date December 1, 1925, executed by M. L. Porter and wife, S. J. Porter, to W. T. Knight and Harry Hines covering the following described land in Archer County, Texas:

1334 All that certain lot, tract or parcel of land, lying and being situated in Archer County, Texas, and described by metes and bounds as follows: Beginning at a stone marked P. J. B. for an inside corner of the Peter J. Bailey Survey; Thence South 950 varas to the S. E Corner; Thence North 89-25 W 951 varas a stone for the southwest corner Peter J. Bailey Survey, Abst. No. 30; Thence West 1941 varas to stone in road, the Southwest corner J. Poitevant Survey No. 1, abst. No. 348; Thence No. O-30W 1600 varas to the Northwest Corner of the J. Poitevent Survey; Thence East in center of road 960 varas to inside corner; Thence North 457 varas to Northwest corner a fence corner; Thence South 89-43 East along fence 1020 varas to corner; Thence North 25 varas to corner; Thence East 1295 varas to Northeast corner, in west line of Effie Stanford land; Thence South 1134.4 varas to South line of Peter J. Bailey Survey; Thence West 345.2 varas to place of beginning, and containing 1070 acres.

Signed: M. L. PORTER.

Witness: C. J. HARPER.

The Witness:

After December 28, 1925, the royalty company continued to assert ownership of this Porter Ranch property No. 83. The next payment on the Porter Ranch was check No. 554, dated December 2, 1926, $1,500.00, pay-

able to the City National Bank. Indorsed by
1335 G. W. Peckham, by A. B., I don't know who A. B. is, I imagine that was George Peckham's stenographer, Anita Brown. The notation on the back of the voucher is, "Notes payable land in fee, to apply on balance due on M. L. Porter, 1,070 acre purchase, $920.82. Interest paid on the above note $221.00." That is all in reference to that property. There is in addition to that with reference to some more properties. Out of the $1,500.00 check, $1,141.82 went on the Porter Ranch property. That check was delivered December 2, and paid December 2, 1926. On the same day, Plaintiff's Exhibit 96, to W. T. Knight, $1,141.82, $920.84 principal, I think that is what that means to be, and $220.98 interest, Porter Ranch, signed by G. W. Peckham. Indorsed W. T. Knight, and paid December 2, 1926. Those two checks seem to correspond in amount, exactly to the penny. As I understand it, many of these transactions we have repudiated because that is our privilege to elect those which we will keep and those which we will return and request our money back. It is a fact that George Peckham paid out $1,141.82, being the same amount as our check, as that portion of our check No. 554, charged to this property on the same day. The next check on this property is No. 670, dated December 20, 1927, and the voucher reads, "Check was issued to G. W. Peckham in the amount of $147.33, The voucher reads, "Interest expense on Porter Ranch property from December 1, 1926 to December 1, 1927." We were asserting owner-
1336 ship to this property then, because Mr. Peckham was the trustee. George Peckham told me to write that on there, and I wrote it, it has been on the books ever since, and if anyone wanted to see it they could have. I did not issue our check until December 20, and that was interest up to December 1, 1927. Plaintiff's exhibit 65 is a check, W. T. Knight, in the amount of $147.33, and reads, "interest to 12-1-27 on unpaid balance Porter Ranch, Archer County," signed by G. W. Peckham. That is the exact amount I gave fifteen days

later. That is the indorsement of W. T. Knight. That was paid. It is a fact that George Peckham paid that amount, which corresponds with the amount in our check No. 670, he paid it by check dated December 5, and I did not give him credit until December 20. I had been asserting ownership in this property for over a year. The next check we gave on this property is No. 778, dated January 14, 1929, to G. W. Peckham in the amount of $21.63, and the voucher reads, "Taxes paid on Porter Ranch, our proportion, $21.63". There might be another check that I do not have down here. Check No. 778 was issued on January 14. We have George Peckham's check dated November 26, 1928, issued to W. T. Knight for $21.63, interest on note on Porter Ranch. I have not given him any check for that. That is indorsed by G. W. Peckham. G. W. Peckham's check is indorsed by W. T. Knight, Knight and Hines. Therefore, George Peckham gave a check on January 14, 1929 for $21.63, and this check dated November 25, 1928, is issued to W. T. Knight for $21.63, on the Porter Ranch. We paid this
1337 amount as applied, this amount of $21.63, as applied on taxes paid on the Porter Ranch for our proportion, and George Peckham paid out a check to W. T. Knight, marked "Interest on note on Porter Ranch," in the same amount. In 1928, George Peckham paid that, and I did not give it to him until January, 1929. The Wichita Royalty Trust claimed that property, the Porter Ranch, from and after the time of its purchase in 1929. I notified the stockholders that we were claiming that particular interest, the letters were sent out, I am sure we reported it. It is Plaintiff's Exhibit 26, the bulletin to the stockholders. The docket sheet shows, the close of business 1925, December 1, 1925, at any rate the bulletin was sent out during 1926. It reported that the Wichita Royalty Company owned one-eighth of the land and royalty in 1,070 acres M. L. Porter lands, Archer County, Texas, cost $1,250.00 cash and $2,762.50 in equal payments due in two and three years from date of purchase.

Q. You knew at that time that this property was being held in trust by the company for someone?

Mr. Rogers:

We object to that as a conclusion of law, at least, a question of mixed facts and law, not the proper subject matter of verbal testimony. The title to real estate required by the statute of fraud to be evidenced by a memorandum in writing, and the declaration of trust expressly provided that such property if any, that the trustee acquires on behalf of the royalty company must be taken and held in the name of the trustee as such.
1338 And it not being shown by the stockholders letter that G. W. Peckham's personal interest in the transaction existed, and the record affirmatively showing that the stockholders were kept in ignorance of his personal interest in the transaction at all times prior to its repudiation and retender.

(Which objection was by the Court overruled, to which the defendant Wichita Royalty Company then and there excepted.)

The Witness:

I knew it, this bulletin was sent out by Mr. Peckham as trustee, and we discussed this thing. The actual preparation of the bulletin, and the actual work was done by me. The properties and everything was discussed, of every kind, very carefully with Mr. Peckham before it was written. I do not recall that any stockholder ever objected to claiming this interest in the Porter Ranch at any time. The other payment made on the Porter Ranch is December 19, 1930, our check No. 970, made to W. T. Knight, attorney-in-fact, $102.83, and the voucher reads, "to our proportion of assessment for 1930 on M. L. Porter Ranch, per statement attached. Interest paid." In ink. On December 17, 1930, we were paying it direct to W. T. Knight, and claiming ownership in the property then, so far as I know. I was the trustee then. I,

for the royalty company, was asserting ownership in this Porter Ranch on December 17, 1930, that was over four years after I had notified all of the stockholders that we owned this interest in that ranch. I knew then that
1339 the title was in the name of W. T. Knight as attorney in fact, that was over a year after George Peckham's death. It seems to me, somewhere in between there, at the time this check was issued—I don't remember just the date, but we sought to secure for ourselves at first, a title to do something in regard to showing that we really had an interest in it, but we never did do anything more than that. I looked into it and found just how the thing was situated. I recognized Mr. Knight was the owner whose title it was standing in, and sent him a check, as trustee of the Wichita Royalty Company, and it was paid out of the Wichita Royalty Company funds, indorsed W. T. Knight, Attorney in fact, Knight and Hines, by A. H. Herron. I don't know whether we ever paid any more than that, that is all the checks I have listed. No. 857, prior thereto on November 29, 1929, was issued to Knight and Hines in the amount of $84.41, "to our part interest to taxes on Porter Ranch, Archer County, Texas." By "our part interest" means whatever interest we had, one-eighth is what we were supposed to have. I was trustee of the Wichita Royalty Company. I signed for the trustee. I knew the name of Knight and Hines. I recognized that the Wichita Royalty Company had an interest, or at least he had paid for an interest. We got some rentals off of this property, but no royalty. On July 27, 1926, we received $111.67, and our notation on the credit memorandum reads, "Our proportion 1/8th of lease rentals, Miscellaneous Revenue from M. L. Porter Ranch, Archer County, Texas." We
1340 took that money and have kept it since, I think you will find that these items are taken into account in this suit. There is another account here, do you want that? I am sure we gave George Peckham credit for this in this lawsuit, if we have not, we want him to have credit for everything that is coming

to him, and we want credit for everything that is coming to us. We got George Peckham's check for $111.67; also our credit memo 208, 7-29-27, we received $115.81, Porter Ranch lease, rental income. It does not show from whom it was received. We kept it. We have offered to give you credit for it. This is property No. 83. According to these records and checks George Peckham paid out like amounts to those he received, corresponding amounts to what we paid. There are two checks here made to the City National Bank, which we have not shown whether they went to his account or not. The books of the company showing the amounts spent on the Porter Ranch correspond to the check given by George Peckham. You now hand me a check to W. T. Knight for $427.50, dated June 29, 1929. So far as I know, we do not have any record where we reimbursed George Peckham for that, I don't imagine it had anything to do with the Wichita Royalty Company, I doubt that the check has anything to do with the Porter Ranch; I imagine it has something to do with some kind of a game, we all know that George played lots of cards and he played for big stakes.

Mr. Boone:

We offer the check in evidence, Defendant's Exhibit 147.

1341 DEFENDANT'S EXHIBIT 147.

Wichita Falls, Texas 6-22-1929 No. .... The City National Bank of Wichita Falls Pay to the order of W. T. Knight $427.50 (Perforated) Paid 6-25-29 (Signed) G. W. Peckham (Indorsed) W. T. Knight (Stamped) City National Bank "7".

The Witness:

I say that I do not know what the check, Defendant's Exhibit 147 was given for. I have nothing to hide in this thing at all, you are accusing me of stealing and you know

very well that you would not stand on the street corner and make that statement to me, neither you nor Mr. Harrell, nor Les Humphrey, or any of the rest of you. I will be glad to look on the records and see if I can find anything with reference to the check for $427.50.

The contracts, the deed, in which we were to pay $10,000.00 the agreement on our part was that we paid $1,250.00 cash and $762.50 on the note, which made $4,012.50, we paid one note of $920.82. I think we are still carrying the other notes, two and three, on the records at this time. That check you handed me in the amount of $427.50, our ledger records show that on June 24, we owed $1,841.68 on the Porter Ranch, if it was our property, and I claimed it before I was trustee, however, as I told you, I could not tell you anything about this check for $427.50. Our books show we owed on June
1342 1, 1929 $1,841.68. This is the property that we tendered back in accordance with the rules that we might accept or reject, this much we elected to keep and those others we repudiated, that is my understanding of the decision handed down by the Supreme Court of the State of Texas. I think this is one we tendered back before the Supreme Court passed upon the case, in the original cross action. We have not paid those two notes. If this check for four hundred and some odd dollars given June 2, by George Peckham, was for part of those notes, we have not reimbursed George Peckham, I am sure, but I will make an effort to see if we have. We did send Knight and Hines a check on December 17, as our proportion. It seems that we had first attempted to get title to it, that was in George Peckham's name, as we understood it, I can't recall the details. I knew in November, 1929, when I was sending a check to Knight and Hines, that they had something to do with the property, and I found out where the title was after I begun to investigate, I think we claimed it up until in 1930, at least whether we claimed it or not, we didn't know what to do about it. The Porter Ranch is in territory that was prospective oil territory more or less, I don't think any

oil was ever found on it, but there was quite a few wells drilled on it at various times, it lies southeast of the Oldham pool, however, this was cut off from the Oldham pool by some dry holes, and there were a number of holes drilled on the Porter Ranch. Two of those notes are still unpaid as far as the royalty company is concerned. I will say that the Porter Ranch is in a likely territory.

1343 My recollection of the oil business in Archer County is that it is not entirely a structural proposition.

I think I have a copy of the deed to property No. 84, the Stephens Royalty. The acquisition of that royalty is shown by check No. 452, dated January 4, 1925, issued to G. W. Peckham in the amount of $5000.00 and reading, "Producing royalties, to purchase of royalty under the" —and there it stops. There is an ink notation on No. 84, in the handwriting of our bookkeeper—I think that should have been 1926, it is evidently a typographical error. The check was made payable to George Peckham. Defendant's Exhibit 8 is a conveyance from J. T. Harrell and C. E. Basham for one-fourth interest in and to one-eighth part of all the oil and gas produced and saved from the south forty acres of the north sixty acres of the west one-half of the northeast quarter of section 83, block 14, H&TC R. R. Co. Survey in Wilbarger County, Texas, the same being an undivided one-fourth of the one-eighth overriding royalty reserved in the assignments as above referred to, dated January 1, 1926. The consideration, $10.00 and other valuable considerations, to J. T. Harrell and C. E. Basham, cash in hand paid by Wichita Royalty Company. $26.00 in stamps, evidencing it was a $26,000.00 transaction, or more. No. 458, producing royalty No. 84, $5,000.00 check was payable to the City National Bank in that amount, that is January 11, Defendant's Exhibit 114, deposited to the credit of G. W. Peckham. The first check was to G. W. Peckham. Defendant's Exhibit 115, check No. 461, dated January 18, 1926, pay-

1344 able to the City National Bank in the amount of $15,769.07, and the voucher reads, in ink, No.

84, and in the original type, carbon, "To purchase of 1/4 of royalty under Stephens forty acres, operated by Staley, et al, and Barclay and Meadows, south Vernon field, total cost $25,769.07, less paid $10,000.00. Also notation, these checks Nos. 452 and 458. The revenue stamps would indicate that more than $25,000.00 was paid for that property, and our records reflect $25,769.07. In 1926, I think we notified the stockholders that we owned that property. The bulletin is dated March 19, 1927, in which we sent out a bulletin to the stockholders in which we listed this property. I will read it, "In Wilbarger County, we have purchased one-fourth of the royalty out of the Stephens land described as follows, north twenty acres of south forty acres of north sixty acres of west half of northeast quarter section 83, block 14, H & T C. R. R. Company Survey, operated by Barclay and Meadows. South twenty acres of the south forty acres of the north sixty acres of the west half of the northeast quarter Section 83, block 14, H & T. C. R. R. Co. Survey, operated by Humble Oil and Refining Company." And it continues, "Each of the above properties have ten wells, there are four producing sands in the south Vernon field in Wilbarger County, which accounts for the larger number of wells on these leases." I would not testify that each and all of the stockholders received these notifications, but as far as we could reach them, they were all told about it; there is about thirteen hundred stockholders and
1345 they shift around and some might not have gotten them. We mailed the notice to the last known address, to everyone as far as I know. As far as I know, we have never had any word from any of the stockholders about this purchase. In the same letter of March 15, 1927, to the stockholders, we again refer to Property 83 as follows, "The Oldham pool has recently been opened up on the farm offsetting the Porter Ranch, 1070 acres in which we own one-eighth of both the royalty and the land in fee. This pool will doubtless be extended over the Porter Ranch within a very short time." We obtained this property 84 direct from J. T. Harrell

and C. E. Basham. We checked the income on the Stephens Royalty and it was $21,527.30 in oil runs. This property was sold, and I do not have the date where or when it was sold, but I will be glad to look it up for you and get it all together. There is a memorandum in here, our check No. 279, our cash receipt memo April 1, 1930, we received $500.00, which reads, "Sales of W. H. Stephens royalty 1/4 of 1/8 overriding royalty in the Humble Oil and Refining Company twenty acres sold to the Humble Oil and Refining Company, Houston, Texas amounting to $500.00—that covers two twenty acre leases, the Humble bought one and Barclay and Meadows the other. As to the Barclay and Meadows deal, to read the whole deed and explain how I understand this thing, it recites, the Daniel Bond had more acreage than was sold that the Wichita Royalty Company got, and it says, "An undivided one-fourth interest in and to one-
1346 eighth part of all the oil and gas produced and saved from the south forty acres of the north sixty acres of the west half of the northeast quarter of Section 83, block 14, H & T C R R Co. Survey, Wilbarger County, Texas." I interpret that to mean we got forty acres and the forty acres was divided into two twenty acre leases. I am reading from Defendant's Exhibit 8. In addition to the five hundred dollars on 285, our cash memo Number, we got $2,750.00 more for the sale of the south twenty acres; the cash memo says, "Notes receivable, Barclay and Meadows, $2,750.00. We got that note and I turned it in to the bank and got credit for it, as I remember. This cash memo here has two dates on it, this date is July 14, 1930, in reference to Barclay and Meadows. There is an item of $125.00 that I believe that has either to do with the first sale—with the first piece of it, or with the second one, but I would like to have time to investigate that. I do not have a sheet showing what we paid for it, and what it cost, and what we got out of it all told, I think it will about balance out.

I have a check here dated January 5, 1926, J. T. Harrell and C. E. Basham, in the amount of $2,201.32, and it says

on the bottom of it, Vernon Royalty, signed by G. W. Peckham; check No. 59, dated January 25, issued to J. T. Harrell and C. E. Basham in the amount of $10,028.00, signed by G. W. Peckham, no notation on it. Plaintiff's Exhibit No. 70, another check, dated March 6, 1926, J. T.
Harrell and C. E. Basham, $5,060.00; then a check
1347 dated March 31, 1926, J. T. Harrell and G. W.
Peckham in the amount of $5,087.00, signed by G. W. Peckham. I figure that G. W. Peckham paid J. T. Harrell $22,376.32, the total of those four checks. I don't know whether there were any more checks given or not. As to whether we collected any royalty off of this property in January, 1926—I think in the list of checks that you asked me to look up, is a check from George Peckham, dated January 30, 1926, to the Wichita Royalty Company, marked "Runs for the first half of January, Stephens Royalty, in the amount of $1,235.99," and our oil run ledger shows that we received $522.03 off of the Staley-Winn, or Humble lease, and $713.96 off of the Barclay and Meadows lease, which totals $1,235.99; and that on February 18, 1926, you asked me to look up a check of $1,103.13, which was made payable to the Wichita Royalty Company and is marked "Runs on last half of January, Stephens Royalty." Our oil run records show that on the Staley-Winn or Humble lease, we received $403.39 for the period January 16, to January 31, and on the Barclay and Meadows lease for the period January 16, to January 31, $699.74, which makes up the total of the checks, $1,103.13. During the month of January, 1926, our records show that this royalty was producing this 1/8th—over $2,300.00 per month, that is, the part coming to the Wichita Royalty Company. We began to receive oil runs effective the first of January, and it was valuable property at that time, it paid out in approximate-
ly eleven months. It was an overriding royalty.
1348 Not one time, to my knowledge, since then, have the stockholders ever repudiated this transaction, or any stockholders. Myself and my lawyers have asked for an accounting.

Mr. Rogers:

We want to offer these oil runs in evidence, Defendant's Exhibit 148.

1349 DEFENDANT'S EXHIBIT 148.

Roy 84 Stephens

From	To		Amount
1-1-26	4-30-26	Sales Oil Staley (See note below)	$ 3481.32
1-1-26	4-30-26	Sales Gas Staley	63.43
1-1-26	5-31-26	Sales of Oil Barkley & Meadows (See note below)	5598.71
1-1-26	5-31-26	Sale of Gas Barkley & Meadows	76.16
4-1-26	2-28-27	Sale of Oil Staley (See note below)	2797.18
4-1-26	2-28-27	Sale of Gas Staley	67.48
6-1-26	5-31-27	Sale of Oil Barkley & Meadows	5000.16
6-1-26	5-31-27	Sale of Gas Barkley & Meadows	107.92
6-1-27	5-31-28	Sale of Oil Barkley & Meadows	2277.40
6-1-27	5-31-28	Sale of Gas Barkley & Meadows	44.89
6-1-28	5-31-29	Sale of Oil Barkley & Meadows	1790.58
6-1-28	5-31-29	Sale of Gas Barkley & Meadows	54.15
6-1-29	3-31-30	Sale of Oil Barkley & Meadows	1140.22
6-1-29	3-31-30	Sale of Gas Barkley & Meadows	27.70
Total to 4-1-1930 when Royalty was sold to Humble Oil & Ref. Co. and Barclay & Meadows			$21527.30

Note: Included in total of 3481.32 is ck of GWP Dated 2-10-26 for 522.03—is ck of GWP Dated 2-24-26 for 403.39.

Included in Total of 4598.71 ck of GWP Dated 2-10-26 713.96 ck of GWP Dated 2-24-26 699.74.

1350 The Witness:

In addition to these checks which I have figured up, that J. T. Harrell and C. E. Basham received from G. W. Peckham between January 15, 1926 and March 31, 1926, I have since learned, since the filing of this in 1931, that G. W. Peckham conveyed to J. T. Harrell and C. E. Basham certain interest that he had in property known as the Curlee tract of land out east of town, which is represented by Plaintiff's Exhibit 74, dated January 23, 1926. It seems that on the Wichita Royalty Company deed it was originally the first of January, that the acknowledgment was written, but it is over-dated, what looks to be the 28th of January. The royalty deed has been in my possession, filed for record February 9, 1926. The lady who took the acknowledgment could tell you more about that overdating than I can, the certified copies from the deed record shows the 28th, they assumed that was the day it was acknowledged. I am not trying to cast any aspersion on George Peckham, I am just telling you what it shows. I do not know what this Curlee land was sold for, or taken in by Harrell and Basham for. That is one of the transactions we originally sued on and are still suing on.

The next one is No. 85, I hand you a check No. 541, for $10,000.00, payable to the City National Bank, dated October 13, 1926, our voucher reads, "Covers No. 85, 86, 87, 88, 89, 90, 91 and 92, which was the Gray County interest." I am sure that is the deeds for it, I do not have them here, they have been misplaced, I think they are in the record.

1351 Mr. Boone:

We offer the check in evidence.

DEFENDANT'S EXHIBIT 149.

Wichita Royalty Company, Wichita Falls, Texas No. 541 October 13. 1926. When properly indorsed pay to

the order of City National Bank $10,000.00 "8" To the City National Bank, Wichita Falls, Texas (41) circled. Wichita Royalty Company, By E. E. Scannell for trustee (in pencil) 85 to 92 Perforated Paid 10-14-26.

The Witness:

The defendant's Exhibit 149 covers properties 85 to 92 inclusive, payable to the City National Bank. Plaintiff's Exhibits 31, 32, 33, 34, 35, 36, 37 and 38, constitute conveyances to those respective pieces of property; each of these conveyances were made from George Peckham to the Wichita Royalty Company.

Agreement: Mr. Rogers:

It is agreed that the instrument Mr. Boone has in his hand, although a carbon copy, is in fact the original second amended original answer and cross action and interpleader of the Wichita Royalty Company filed September 14, 1934, in Cause No. 24549-B, and is substantially the same pleading as filed in the early part of 1931, except that in this amendment filed in September, 1934, the City National Bank in Wichita Falls, Texas was made a party.

Mr. Boone:

It is further agreed that substantially the same allegations in paragraph 20 of this petition were in the original petition filed in 1931.

1352 The Witness:

All of these deeds were filed within the month of December, and all of them were executed within that month, 1926, they have been in possession of the Wichita Royalty Company up until this lawsuit was started, and the records show what we paid for it on the books of the concern. When we filed this lawsuit in 1931 and refiled it again in 1934, we elected to rescind this entire transaction of all of the Wheeler and Gray County properties.

85 to 92 inclusive, at that time I don't think the properties were worth what we paid for them. Since we filed the first amendment, as well as since we filed the original cross action, the properties have become valuable. We first repudiated the transaction, and now elect to keep them, because they are profitable, even though they came direct from George Peckham. We tendered the properties back and asked for our money back but who it was to come from would be determined by the Court, as I understand it. The check in payment of these properties went directly to the City National Bank, payable to that bank. I have not read the petition, but we offered to tender it back and to do whatever was necessary in regard to getting our money back. I heard Guy Rogers, in open Court, make the following declaration, while I was on the witness stand testifying about this property, "disclaiming any interest in the Wichita Royalty Company or its stockholders, in and to any of the properties, which by the testimony of the bank, it has been suggested these moneys were to pay for, and if a portion of the
1353 properties, I assume, that are covered by the deed that I last offered, in other words, we are tendering and having during all of the time, disclaimed any interest in and to all of the Gray County stuff, and we ask for the $10,000.00 on it." That statement was made by my lawyer, Guy Rogers, when we tried this case in 1932.

Mr. Boone:

We offer at this time paragraph 20 of the amended petition filed by the Wichita Royalty Company on September 14, 1934.

Mr. Rogers:

I offer the entire petition in evidence.

1354 (Said instrument marked "Defendant's Exhibit 150" and the petition, including Paragraph 20, offered by Mr. Boone, reading as follows:)

DEFENDANT'S EXHIBIT 150.

In the 78th District Court of Wichita County, Texas.

The City National Bank of Wichita Falls, Texas,
vs. No. 24,549-B.
Wichita Royalty Company, et al.

To the Honorable Judge of said Court:

Subject to and without waiving pleas and dilatory matters heretofore filed and pleading in due order, come now Wichita Royalty Company, a joint stock association operating under a declaration of trust filed in Wichita County, Texas, and E. E. Scannell, Trustee and one of the some thirteen hundred (1300) stockholders of Wichita Royalty Company, who joins herein for himself and all other stockholders of said company, hereinafter called cross complainants, and with leave of the Court first had and obtained, file this their second amended original answer, cross action and interpleader in lieu and in amendment of the original pleading filed December 5, 1930, as amended by pleading filed February 14, 1931, so that the same shall read as follows:

1355 1.

Come now Wichita Royalty Company, a joint stock association operating under a declaration of trust filed in Wichita County, Texas, and E. E. Scannell, its Trustee and one of said some thirteen hundred (1300) stockholders of Wichita Royalty Company, who joins herein for himself and all other stockholders of said company, herein called cross complainants, in answer to plaintiff's first

amended original petition, as well as in cross action against the plaintiff, The City National Bank of Wichita Falls, Texas, and its successor, The City National Bank in Wichita Falls, Texas, both National Banking Corporations with principal place of business in Wichita County, Texas, and by way of interpleader against J. T. Harrell, W. H. Peckham, as administrator of the Estate of G. W. Peckham, deceased, William Peckham and George Peckham, minor sons of G. W. Peckham, deceased, and Mrs. Hazel Peckham, surviving wife of G. W. Peckham, deceased, each a resident citizen of Wichita County, Texas, and for answer, cross action and interpleader cross complainants say:

2.

Except as herein specifically amended, cross complainants deny all and singular each and every averment of fact in plaintiff's said amended petition contained, demand strict proof thereof, and with respect thereto put themselves upon the country and ask thereon a determination thereof by a jury.

3.

Pleading non est factum to the instruments declared upon by plaintiff, cross complainants say that neither of said obligations herein sued on by plaintiff was executed by or with authority from Wichita Royalty Com-
1356 pany, nor for its primary use and benefit; that Wichita Royalty Company is neither the maker nor indorser nor otherwise a party to nor bound by any instrument and/or obligation sued on; that if in fact anyone signed the Wichita Royalty Company's name to any of the instruments sued on, the same was wholly inoperative against the association as no one had authority to bind the company thereby for the purposes, under the circumstances and upon the facts existing at the time; that as will hereinafter more fully appear, Wichita

Royalty Company has received no consideration for the execution of any of the instruments sued on by plaintiff that the same were executed solely and only for the personal benefit of and inured but to the advantage of G. W. Peckham, the bank and the officers of the bank negotiating for the original execution and subsequent renewals of the obligations declared upon by plaintiff; that monies originally advanced by the plaintiff upon notes originally executed in the name of the royalty company so that the borrowing trustee might obtain personal funds therefrom, have all been repaid to and received by the plaintiff as a matter of law, as well as of fact; and that the plaintiff and the impleaded defendants are indebted to Wichita Royalty Company in the amounts, from the times and upon the fact hereinafter shown.

4.

That at all times the plaintiff bank, its officers, agents and employees, knew each and every fact herein
1357 elsewhere pleaded, and were charged by law with knowledge thereof upon and under such facts so averred.

5.

The declaration of trust creating Wichita Royalty Company and which in and of itself was and is the charter of the Trustee's power, gives to the trustee thereunder general authority but to carry out the purposes of the trust shown by the articles of agreement to be solely and only the purchase and sale of oil and gas royalties and other oil and gas properties. It is therein provided that the title to all property acquired or to be acquired from time to time by the trust and all investments thereof should be made and held in the name of the Trustee as such, and that the Trustee shall hold all of the funds and property of the trust as Trustee with the powers and sub-

ject to the limitations declared in the declaration, shown to limit the powers of the Trustee to dealing in oil and gas business.

6.

G. W. Peckham was such Trustee from 1923 until his death in 1929. He was extensively engaged in private business aside from that of trustee. Doing business with the plaintiff bank during this period, he carried his personal account in his own name therein and the trust account in the name of Wichita Royalty Company. Upon Peckham's death, E. E. Scannell became and now is substitute Trustee, succeeding after Peckham's death to the powers and duties theretofore vested in the said G. W. Peckham. During the period beginning October
1358 8, 1925 and ending November 12, 1929, G. W. Peckham drew forty-nine (49) checks on the funds deposited in the plaintiff bank to the credit of Wichita Royalty Company, aggregating the sum of $134,-712.14, the checks being signed by him as Trustee for Wichita Royalty Company, and after his death seven (7) additional checks were drawn on the same account by Scannell as Trustee, aggregating $10,055.42. Forty-five (45) of the checks drawn by Peckham aggregated $119,-473.98 and were made payable to the order of the plaintiff bank upon which they were drawn, and four checks totaling $9,283.16 were in favor of G. W. Peckham personally. The Trustee was given personal credit on the books of the plaintiff bank for these forty-nine (49) checks and were paid out upon his personal order upon his private checks for personal purposes, some to pay the plaintiff bank on personal obligations due by Peckham as an individual, and some to pay Peckham's various and sundry personal debts.

7.

All checks were upon voucher form. One check is here now reproduced as an example of all. That which is underscored was written into the printed form of the check:

Remittance Advice.

Attached hereto is our check in full settlement of the items listed below. If not correct please return with explanation.

WICHITA ROYALTY COMPANY.

Description	Detail	Total
Notes Payable:		
To apply on note held by City National Bank		*$1,500.00*

Detach here before depositing check.

..... (Perforation) .....

Wichita Royalty Company,
Wichita Falls, Texas.

August 16, 1927. *No. 635.*

When Properly Indorsed Pay to the Order of *City National Bank $1,500.00, Exactly One Thousand Five Hundred Dollars No Cents.*

WICHITA ROYALTY COMPANY.
By *G. W. PECKHAM*, Trustee.

To The City National Bank,
Wichita Falls, Texas.

On the back of checks as and when presented and above the place of usual indorsement were printed these words:

"Indorsement hereon by the payee constitutes acknowledgment of full payment of the items listed on accompanying remittance statement. No other receipt required."

XVI.

These checks were deposited by the bank to the personal account of the drawing trustee, and a corresponding charge made against the trust deposit, the bank well

knowing that the fund was a trust fund and was being improperly diverted from the trust account to the personal account of the trustee of such fund by being deposited to the credit of an account which the bank knew G. W. Peckham was using solely for personal pur-
1260 poses.

XVII.

There now follows a list of checks drawn upon the trust deposit with the plaintiff bank, wherein is given the check number, the date, the amount, the payee, to whom credit was given, and voucher notation, each item being charged to have been an accomplished misappropriation of trust funds by the trustee through the facilities and upon the active participation of plaintiff bank, to-wit:

Check No.	Date	Amount	Payee	Credit Given	Voucher Notation
427	10- 8-25	$ 5,500.00	Bank	Peckham	Purchase royalties
451	12-28-25	1,250.00	Bank	Peckham	Producing royalties
452	1- 4-25	5,000.00	Peckham	Peckham	Producing royalties
458	1-11-26	5,000.00	Bank	Peckham	Producing royalties
461	1-18-26	15,769.07	Bank	Peckham	Stephens Royalty
478	3- 6-26	17,623.70	Bank	Peckham	Marlborough Purchase
479	3- 6-26	6,000.00	Security	Peckham	Marlborough Purchase
485	3-31-26	7,500.00	Bank	Peckham	Marlborough Imp'mnt.
495	3-23-26	300.00	Bank	Note	Interest to Bank
503	5-20-26	3,000.00	Peckham	Peckham	Marlborough Imp'mnt.
506	5-29-26	500.00	Bank	Note	Interest to Bank
507	5-29-26	1,500.00	Bank	Peckham	Marlborough Imp'mnt.
510	6-16-26	4,500.00	Bank	Peckham	Marlborough Imp'mnt.
519	7-13-26	1,000.00	Bank	Peckham	Marlborough Imp'mnt.
521	7-16-26	300.00	Bank	Note	Interest to Bank
525	8- 2-26	4,000.00	Bank	Peckham	Highland Ir. Co. Note
531	8-27-26	500.00	Bank	Note	Interest to Bank
532	8-27-26	4,357.58	Bank	Peckham	Highland Ir. Co. Note
540	10-13-26	300.00	Bank	Note	Interest to Bank
541	10-13-26	1,000.00	Bank	Peckham	Royalties Wheeler and Gray Counties

Check No.	Date	Amount	Payee	Credit Given	Voucher Notation
550	11-20-26	7,500.00	Bank	Peckham	Purchase royalties
554	12- 2-26	1,500.00	Bank	Peckham	Royalties and fee
556	12-26-26	700.00	Peckham	Highland	Highland Ir. Co. Note
556-A	12-22-26	538.16	Peckham	Highland	Highland Ir. Co. Note
557	12- 7-26	1,920.00	Bank	Draft	Purchase royalties
569	1-11-27	300.00	Bank	Note	Interest to Bank
571	1-19-27	2,000.00	Bank	Peckham	Marlborough Imp'mnt.
579	2-19-27	2,500.00	Bank	Peckham	Marlborough Imp'mnt.
582	3- 1-27	500.00	Bank	Peckham	Interest to Bank
583	3- 1-27	301.82	Bank	Peckham	Purchase royalties
584	3- 1-27	500.00	Bank	Note	Interest to Bank
591	3-23-27	2,000.00	Bank	Peckham	Purchase royalties
599	4-14-27	300.00	Bank	Note	Interest to Bank
615	6- 8-27	500.00	Bank	Note	Interest to Bank
630	6-18-27	1,200.00	Bank	Peckham	Note to Bank
628	7-16-27	1,500.00	Bank	Note	Interest to Bank
635	8-16-27	1,500.00	Bank	Peckham	Note to Bank
650	10-14-27	2,400.00	Bank	Peckham	Note to Bank
657	11-25-27	1,800.00	Bank	Peckham	Interest to Bank
682	1-18-28	2,000.00	Bank	Note	Note to Bank
710	4-20-28	1,850.00	Bank	Peckham	Note to Bank

717	5-17-28	220.00	Bank	Note	Interest to Bank
721	6- 1-28	424.66	Bank	Note	Interest to Bank
733	7-23-28	220.00	Bank	Note	Interest to Bank
752	9-27-28	424.66	Bank	Note	Interest to Bank
768	12- 4-28	2,000.00	Bank	Note	Note to Bank
791	2-19-29	1,500.00	Bank	Note	Note to Bank
814	6- 7-29	1,500.00	Bank	Note	Note to Bank
824	7-15-29	212.49	Bank	Note	Interest to Bank
836	8-30-29	1,000.00	Bank	Note	Note to Bank
856	11-23-29	1,500.00	Bank	Note	Note to Bank
880	1-24-30	1,500.00	Marlborough	Tex. Inv. Co.	Loan
890	2-24-30	1,000.00	Bank	Note	Note to Bank
898	4-10-30	1,000.00	Bank	Note	Note to Bank
908	5-13-30	500.00	Tex. Inv. Co.	Tex. Inv. Co.	Marlborough Note
920	6-14-30	1,500.00	Bank	Note	Note to Bank
930	7-14-30	3,055.42	Bank	Note	Note to Bank
Total		$144,767.56			

1363- 10.

Additional to the above, and as a further misappropriation, the trustee Peckham sold two properties belonging to the trust and received therefore the aggregate of $12,-048.00, $6,000.00 thereof being evidenced by cashier's check and deposited to the personal account in the plaintiff bank, of G. W. Peckham and by him used for his own personal benefit. The remaining $6048.00 was paid by the purchaser of the trust property under escrow contract between Wichita Royalty Company and the purchaser, deposited in the plaintiff bank as escrow agent, with executed conveyance to be surrendered to the purchaser upon the payment of $6,000.00 and interest, as evidenced in writing deposited with the plaintiff bank. The purchaser paid into the escrow the total of $6048.00 by checks payable to the plaintiff bank, which the bank, well knowing the money to be trust money, deposited to the personal account of G. W. Peckham and which was by him misappropriated.

11.

During the period of time covered by the transaction above, the bank received from G. W. Peckham upon his personal indebtedness to it $57,764.21, said payments being made to the bank from the personal account of G. W. Peckham with the bank to which the above funds had been credited, and but for the credit of which trust funds such payments could not all have been made, and at the very outset of the series of misappropriations, the defaulting trustee diverted trust funds from Wichita Royalty Company's account to his individual account so that he could, as he did, pay therefrom the bank upon his individual debt.

1364 12.

The perforation on each check and the notation on the back thereof advised the bank that the check as and when

presented was a voucher check and that attached thereto when issued was a voucher upon which was written the purpose thereof, and the bank was thus referred to matters of writing wherefrom it affirmatively appeared that each of the several checks now declared upon was issued for other than a trust purpose, but a purpose personal to the trustee and involved in a transaction wherein the trustee was personally interested, and in the consummation of which there was a breach of trust facilitated through the bank's charging the trust deposit and crediting the trustee's personal account.

13.

Each of the charges against the trust deposits and credits to the personal account of the drawing trustee was made at a time when the personal account of the trustee had been all but exhausted and he was indebted in large amounts to the plaintiff bank.

14.

The impleaded defendant, J. T. Harrell was, during the period of these several transactions, the active officer of the plaintiff bank who negotiated with G. W. Peckham certain loans hereinafter described; a substantially large part of his loans were first deposited to the trust
1365 account and therefrom diverted to the personal account of the drawing trustee so that such trustee as an individual might, as he did, pay to the loaning banker upon Peckham's personal debt.

15.

The $22,000.00 note sued on by the bank was but in renewal of a $15,000.00 note dated January 18, 1926 and a $25,000.00 note dated March 1, 1926. The 1926 loans

were negotiated by G. W. Peckham through J. T. Harrell for the bank:

(a) On January 18, 1926, J. T. Harrell credited the trust deposit with $15,000.00 and charged the trust liability ledger therewith, Peckham executing Wichita Rolyalty Company's note therefor. That date Peckham personally owed the bank $28,050.00 plus accrued interest. Peckham and Harrell were jointly and severally liable to Highland Irrigation Company for $15,895.00 plus interest as the unpaid purchase price of Marlborough Addition, their liability interest being one-fourth each. Theretofore, Peckham had caused to be issued trust checks Nos. 452 and 458, dated January 4th and January 11, 1926, respectively totaling $10,000.00, causing the voucher records to show the purchase of royalty and receiving personal credit therefor at the bank. On January 18, 1926, the date of the loan, Peckham issued trust check No. 461 for $15,769.07, made payable to the bank, receiving personal credit therefor the same day the bank charged the trust with the $15,000.00 loan. The notation on voucher No. 461 showed the $15,769.07 check to be the balance of the $25,769.07 purchase of one-fourth royalty
1366 under Stephens 40 acres and referred to checks Nos. 452 and 458 for $5,000.00, previously paid. The Stephens royalty was owned by J. T. Harrell and C. E. Basham, both active officers of the plaintiff bank. One-half of this royalty was sold to G. W. Peckham by deed dated November 9, 1925 and filed for record November 16, 1925. Later on, and as a separate transaction, the other one-half of the Stephens royalty was sold by Harrell and Basham for an agreed consideration of $22,407.00, the deed being dated January 1, 1926, acknowledged January 28, 1926, revenue stamps canceled February 2, 1926 and filed for record February 4, 1926. Seven days after the $15,000.00 loan and the diverting of $15,769.07 to the personal account of G. W. Peckham and before another deposit was made to Peckham's personal account, Peckham issued his personal check on his private account

for $10,028.00, payable to J. T. Harrell and C. E. Basham in part payment for the Stephens royalty sale. But for the tranfer of this $15,769.07, Peckham's personal balance would have been but $1084.04 when the bank paid Harrell and Basham the $10,028.00, in payment of his private debt. The difference between the $25,769.07 transferred from the trust account to the personal account of the trustee and shown trust books to be in payment of Stephens royalty, and the $22,407.00 sale price by Harrell and Basham makes the trustee's personal profit $3,362.07. This $15,000.00 loan was made by Harrell personally. He personally made the royalty sale. It is the custom of banks and bankers, and was at that time, that
1367 when a loan of this size is made, the purpose of the loan is always inquired into, the purpose of this loan being to obtain for Peckham personally funds with which to pay the loaning banker, Harrell, and his copartner, C. E. Basham, an active officer of the bank. Although at the time, the trust had lots of property and owed no debts, still the loan being intended for the personal benefit of G. W. Peckham, J. T. Harrell required that G. W. Peckham indorse the note personally. The trust now charges that this $15,000.00 loan so made between Harrell and Peckham was for the purpose of G. W. Peckham being able at a time when his personal credit was exhausted, to use trust credit so that he might obtain money to divert to his personal account and therefrom pay in part a private debt to the loaning banker, a part to pay the bank itself a private debt, the balance to be paid to Peckham's personal creditors, and all of the facts and circumstances to be kept and concealed from the stockholders. Trust checks in excess of the deposited loan were subsequently honored by the bank to which they were payable in sufficient amounts to discharge this credit.

(b) On March 1, 1926, the impleaded defendant, Harrell, for the bank, credited the trust deposit with $25,000.00 and charged the trust on its liability ledger therewith, receiving the trust note therefor executed by G. W.

Peckham. That day Peckham personally owed the bank $28,050.00 plus interest. His deposit balance was $341.90. He and Harrell were jointly liable to Highland Irrigation
Company for $51,895.00 plus interest as the un-
1368 paid purchase price of Marlborough Addition
bought September 25, 1925 and platted as an Addition December 4, 1925. Sales of lots were active on a start but economic conditions changed and sales slowed up. It was then necessary to spend large sums of money for the improvement of Marlborough addition. Thus on March 1, 1926, Peckham negotiated a loan with Harrell, both being partners in Marlborough Addition, and good friends. Harrell issued the bank's deposit slip for $25,000.00, thus crediting the trust account and charging its liability ledger. That same day Peckham issued his personal check for $11,811.85 to his brother, who was another partner in Marlborough Addition, the payment being for an additional one-fourth interest in Marlborough Addition, making Peckham's personal interest in such Addition one-half thereof. Peckham's personal balance of $341.90 the morning of March 1, 1926 was insufficient to clear the $11,811.85 check drawn thereon payable to Peckham's brother. The deposit balance of the trust that morning was $11,657.94, which during the day was increased to $35,657.94 by the $25,000.00 credited loan. Before another deposit and on March 6, 1926, Peckham issued trust checks Nos. 478 and 479, the first for $17,623.70 drawn on and payable to the plaintiff bank, presented same to the bank and received personal therefor; the other for $6,000.00 payable to Security National Bank, where Peckham received personal credit. The day of this simulated transfer of trust funds to the extent of $17,623.70 from the trust account to the personal account of
the drawing trustee and before another deposit
1369 therein and but the fifth day after Harrell's $25,000.00 loan to Peckham, G. W. Peckham issued his personal check for $5060.00, payable to J. T. Harrell and C. E. Basham, which was paid the same day and credit was given by the bank therefor, one-half to Harrell

and one-half to Basham. But for this $17,623.70 transfer of the proceeds of the $25,000.00 loan, the personal account of G. W. Peckham would have been $125.20, when in fact Harrell cashed the $5060.00 personal check of G. W. Peckham in payment of a private debt. On the 9th day of March, Peckham's brother cashed his $11,811.85 check. The check No. 478, on its face, when presented and cleared referred to a voucher which showed the purpose of its issuance to the purchase of G. W. Peckham's one-half interest in Marlborough Addition for a set up consideration of $49,566.20, represented by $23,623.70 cash paid by checks Nos. 478 and 479, and subject to $23,-215.50 due Highland Irrigation Company. Peckham had paid in cash at the time of his original purchase of a one-fourth interest, $4723.75. After March 6, 1926, Peckham personally received trust funds totaling $31,596.74 entered upon the books as improvements to Marlborough Addition, and personally expended thereon but $27,000.00, a further difference of $4,596.74 in his favor, or a total profit of $7,088.10 to Peckham's brother personally, and $11,-684.84 to Peckham personally, in a transaction where Peckham assumed the dual role of dealing as an individual with himself as trustee. At a profit to himself personally, without notice to or knowledge by the stockholders from whom all transactions were carefully and methodically concealed, and the checks being payable to the bank was but a part of the fraudulent plan to conceal. J. T. Harrell made the $25,000.00 loan. He was still Peckham's partner in the Marlborough Addition and his personal friend. He was a banker with long experience and it was customary for banks and bankers to inquire the purpose of a loan of that size, which loan was made for the purpose of inuring to the benefit of the trustee himself, the loaning banker, the bank and the personal creditors of the drawing trustee. Peckham was personally required to indorse the note. This original loan was made with Harrell so that Peckham with an exhausted personal credit might use trust credit so that he might divert monies from the trust deposit to his personal

1370

account in profit to himself, the bank and the loaning banker might profit in the transaction where he was both purchaser and seller, and assuming a dual position in breach of trust, all known to but condoned by the bank, its agents, servants and employees.

16.

Subsequent to the execution of the above 1926 notes, and in addition to admitted credits thereon from trust funds, there was paid thereon items totaling $11,250.00, with which such notes were not credited and which aggregate sum was not given the effect of payment upon any renewal so that the last renewal of said 1926 transactions were without consideration to the extent of said several payments. This $11,250.00 is represented by checks totaling such amount, of which the check reproduced
1371 above is one, all being drawn on and payable to the bank's order, and when presented referred by writing thereon to an accompanying remittance advance showing each check to have been issued to apply upon the trust's note payable to the bank. The proceeds of these checks, instead of being applied to the indebtedness of the trust to the bank, were credited to Peckham's personal account and withdrawn therefrom upon his private check to pay his individual debts and by him misappropriated. During Peckham's life he caused trust books to show its bank liability to have been reduced by such amounts through himself renewing the bank's note from time to time without either of such credits. Upon Peckham's death, the substitute trustee as a part of a plan to cover up Peckham's fraud, and further to conceal from the stockholders the true facts, changed trust books to conform to the bank's book and renewed the note without such credit. Peckham in his lifetime paid from his personal account $6,821.22 upon the trust's note, yet the trust has elected, and now elects to credit such item, first, upon the misappropriation evidenced by the $6,-

000.00 check drawn on the plaintiff bank payable to the order of the Security National Bank, deposited to Peckham's personal credit with the Security National Bank, and therefrom misappropriated by the trustee, crediting the balance upon the earliest maturing misappropriation of the trustee.

1372 17.

Through a joint participation of the bank and the trustee $53,740.89 was misappropriated upon checks for the most part payable to the bank's order and overdrawn on the trust deposit account with the bank, and by the bank charged against the trust deposit and credited to the personal account of the drawing trustee and therefrom disbursed upon the personal check of G. W. Peckham, some to pay the bank his private debt, some to pay bank officers an individual obligation and all for purposes other than the trust. To simulate regularity and as a part and plan of his system to fraud and conceal, the trustee caused such checks for the most part to be made to the bank's order and caused trust checks to reflect the purpose of said checks totaling said aggregate amount to be for the purchase by the trust of certain mineral interests but the stockholders were not advised, nor the checks of the trust did not show, that Peckham had a personal interest in all of such transactions.

18.

During his trusteeship, Peckham was extensively engaged in the purchase and sale of oil properties as an individual and in his own right. He would generally buy properties near development in the vicinity of a drilling well and at a time and under circumstances when the value of properties in the locality was of a highly speculative and fluctuating value. These properties he would buy with his own money and take title thereto in his own name and during the period of the fluctuating value

and at a time when it appeared that the interest so bought was of little or no value, he would thereupon exe-
1373 cute an instrument of conveyance from himself as an individual to his trust at a consideration fixed by himself sometimes for the exact amount of money that he paid for the interest and sometimes at a price whereby he would personally profit, but at no time did he have the prior consent or subsequent approval of those whose moneys and properties he held in trust.

19.

Thus the trust books were caused to reflect the purchase of properties for the aggregate amount of $53,740.89, but such trust books did not show that these properties had been bought by Peckham as trustee from himself as an individual. Of the properties so reflected by trust books as having been purchased by the trust and conveyed by Peckham to the trust, he only owned properties representing $45,740.89, while trust books and vouchers described other properties of a value of $8,000.00, which were never owned by Peckham, and which the trust never received. In other words, Peckham himself as an individual owned properties which he sold and conveyed to the trust for a set-up book value of $45,740.89 which he himself received, while he also set-up on the books as properties acquired by the trust $8,000.00 paid to him as an individual for properties which Peckham did now own, and which the trust did not receive; all of the properties (except Stephens Royalty) were practically valueless during Peckham's lifetime, none of them having produced a drop of oil.

1374 Peckham was never unfair to himself when acting in the dual capacity of buyer and seller. His every sale as an individual and purchase as a trustee was without the prior consent or subsequent knowledge of those for whom he was acting in a fiduciary capacity,

all of the facts being concealed during Peckham's life and by the substitute trustee until immediately before filing the suit.

20.

With respect to all of such properties so conveyed, or supposed to have been conveyed by G. W. Peckham as an individual to his trust, cross complainants have elected to repudiate as nullities and with respect to same make such tenders and offers due equity as in good conscience required, such transactions being in connection with checks listed above and numbered 427, 451, 452, 458, 461, 541, 550, 583 and 591, and concerning the following properties:

a. The East 30 acres of a 71 acre tract of the Milligan Survey, Callahan County, Texas, more particularly described in a deed recorded in Vol. 103, at page 150, of the Deed Records of said County.

b. 1070 acres known as the Porter Ranch in Archer County, Texas.

c. Marlborough Addition to the City of Wichita Falls, Texas, and/or its corporate successor, the Texas Investment Company.

d. All properties in Gray and/or Wheeler Counties, Texas.

1375 e. East 1/2 of Lot 10, North Anderson Ranch, Archer County, Texas.

f. Southwest 60 acres of the E. Polk Land, Abstract 717, William Polk Preemption Survey, Archer County, Texas.

21.

Typical of the way and manner in which Peckham dealt with himself as an individual and himself as trustee, were his transactions behind trust check No. 541 for $10,000.00,

which was drawn on and payable to the plaintiff bank and deposited to the personal account of the drawing trustee. Between October 20, 1926 and December 7, 1926, Peckham personally bought mineral and/or royalty interest in Gray and Wheeler Counties, Texas, for an aggregate consideration of $44,800.00. He sold certain tractional interest thereof to United Royalty Company, to Tolowa Royalty Company, Wotola Royalty Company, Murchison & Fain and J. T. Harrell, conveying certain fractional interests thereof to his own trust and retaining a substantial interest therein himself, his profit in the entire transaction being $17,700.00. He directed the bookkeeper to enter upon the books of the trust that the $10,000.00 check theretofore issued, represented the trust's purchase of these Gray and Wheeler County properties, and though he had advised the stockholders that the property had been acquired, he did not advise the stockholders that he, as an individual, had sold the properties to the trust at a profit to himself, nor did he advise the stockholders that he had retained in his own name title
1376 to an interest in the certain respective properties which he was holding in trust for Wichita Royalty Company, such intent to hold in trust such properties additional to those actually conveyed being evidenced by a memorandum in his own handwriting in words and figures as follows, to-wit:

"Bought Wheeler County royalty for $44,800.00—Paid as follows, Webb $5400.00, Johnson $4,000.00, Noel, $5,000.00, Section 57, $8400.00, Section 43 $2,000.00, Section 44, $4,000.00, Plummer $8,000.00, Section 12 was $8,000.00, sold Tolowa $30,500.00, sold Joe Art $1,000.00, sold J. T. Harrell $1,000.00, sold United Royalties $20,000.00, sold balance to Wichita Royalty Company for $10,000.00, which was exact cost paid."

22.

Thus is evidenced Peckham's secret intent to hold in trust for Wichita Royalty Company the title to and pos-

session of all the properties so bought in Gray and Wheeler Counties, Texas, which had not been sold to others, although he did not in fact convey to the trust but a portion thereof. With respect to this matter, the trust says in the first place that the transaction is not binding upon it, and that it should recover the $10,000.00 misappropriated by Peckham through check No. 541 with bank's participation and through its facilities, but if for any reason said transaction be binding upon the trust, in such event, but only in such alternative, the trust says that Peckham held in trust for it those mineral in-
1377 terests situated in Gray and Wheeler Counties, Texas, described as follows:

Wheeler County.

a. 1/128 plus 15/32 mineral interest as royalty in the NE 1/4 of Section 47, block 24, H & GN Ry Co. Survey, Wheeler County, Texas.

b. 1/256 plus 1/64 mineral interest as royalty in the W 1/2 of the SE 1/4 of Section 43, Block 24, H & GN Ry. Co. Survey, Wheeler County, Texas.

c. 1/256 plus 15/64 mineral interest as royalty in the E 1/2 of Section 54, Block 24, H & GN Ry. Co. Wheeler County, Texas.

d. 1/16 mineral interest as royalty in the NW 1/4 of Section 44, Block 24, H & GN Ry. Co. Survey, Wheeler County, Texas.

e. 1/16 mineral interest as royalty in the N 1/2 of Section 45, Block 24, H & GN Ry. Co. Survey, Wheeler County, Texas.

f. 1/16 mineral interest as royalty in E 1/2 of Section 57, Block 24, H & GN Ry. Co. Survey, Wheeler County, Texas.

Gray County.

a. 1/4 mineral interest as royalty in W 1/2 of the SE 1/4 and the NE 1/4 of the SE 1/4 of Section 59, Block 25, H & GN Ry. Co. Survey, Gray County, Texas.

b. 1/8 mineral interest as royalty in S 1/2, Section 61, Block 25, H & GN Ry. Co. Survey, Gray County, Texas.

1378 c. 1/64 mineral interest as royalty in NW 1/4, Section 60, Block 25, H & GN Ry. Co. Survey, Gray County, Texas.

The trust says that if for any reason it cannot repudiate this transaction between himself as trustee and himself as individual, that it should have judgment for the title to and possession of said lands and premises.

23.

A portion of the misappropriation by the trustee Peckham was accomplished through the facilities of the bank upon checks for the most part payable to the bank's order, aggregating $55,219.44, which the trustee caused his books to show as the purchase price and improvement cost of what is known as Marlborough Addition, but which transactions were carefully withheld and concealed from the stockholders. The vouchers referred to by the checks contained the notation that the purpose of the respective checks was to purchase and/or improve this addition. J. T. Harrell, G. W. Peckham, and W. H. Peckham and another bought and for some six months developed a tract of land adjoining Wichita Falls as a townsite addition. The burden became heavy. Peckham was jointly obligated with the bank's president upon more than fifty notes as the unpaid purchase price of this land. Peckham was also indebted to the bank in excess of $28,000.00. His personal balance was $341.90. His credit was

exhausted. The trust had lots of property and owed by little. Much money was needed further to improve Marlborough. Peckham and Harrell were friends;
1379 they were business associates. Peckham approached Harrell for a loan. A $25,000.00 loan was negotiated as above shown. Peckham personally indorsed the $25,000.00 note. He then issued trust check No. 478 for $17,623.70 drawn on and payable to the bank's order and received personal credit therefor with the bank. Thereupon G. W. Peckham got a deed to himself personally from his brother W. H. Peckham to his brother's one-fourth interest in Marlborough Addition making G. W. Peckham as an individual, the then owner of an undivided one-half interest in the Marlborough venture. It was, and is, the universal custom of banks and bankers when a ten to twenty-five thousand dollar loan is negotiated, that the bank learn by inquiry the purpose for which the money is required. The day this $17,623.70 check was deposited to Peckham's personal account and before another deposit was made to his personal account, and by the fifth day after Harrell's $25,000.00 loan, Peckham issued his personal check for $5060, payable to J. T. Harrell and another officer of the bank to pay a personal debt of Peckham to these gentlemen. Said check being paid the date of its issuance, J. T. Harrell received a $2530.00 credit at a time when but for the $17,623.70 trust check deposited to Peckham's account, his balance would have been but $125.00 when Harrell cashed the $5060.00 check. Later G. W. Peckham executed a deed to one-half interest in Marlborough, but it was never delivered but was left in the possession of a third party with instruction that it should not be recorded but should be concealed from everyone and no one permitted
1380 to see it or to know of its existence, and it was not the grantor's intention that the deed should be delivered. During his lifetime Peckham treated the property as his own, exercised dominion over it, executed deeds of conveyance to parties thereof, signed releases of liens thereon, rendered the same for taxation as his

own and never disclosed to anyone of any sale thereof, and in fact so acted as to evidence his intention to claim personal title thereto in the event of its success but to repudiate the same and claim it to be a trust loss in the event of failure.

24.

Wichita Royalty Company is sued herein upon its indorsement of Texas Investment Company's note payable to the bank. The maker of this note is the corporate successor of the Marlborough Addition partnership, shown above to have been formed in the fall of 1925. As shown, Peckham originally owned a quarter interest and subsequently purchased a similar interest from his brother and was the record and equitable owner of a one-half of the Marlborough properties and liable for half of its debts at the time the above described $25,000.00 loan was negotiated for Peckham's personal benfit in March, 1926, as above pleaded. After having executed, but not having delivered, a deed to his interest Peckham later joined J. T. Harrell and the other owner of Marlborough partnership in the formation of a corporation known as the Texas Investment Company, Peckham subscrib-
1381 ing personally to one-half of the capital stock and the other partners their pro rata parts. Peckham joined in a deed to the corporation and the same was recorded. This corporation took title to this property free of the outstanding and unrecorded deed which Peckham had executed to his trust.

25.

Soon after the death of G. W. Peckham in November, 1929, the substitute trustee, who theretofore had been the bookkeeper of the trust acting under the direction of Peckham and having but ministerial duties, and being the owner of no certificate of stock in the trust during the period of time that Peckham was misappropriating the funds, became by appointment of Court, the substitute

trustee, and W. H. Peckham became the administrator of Peckham's Estate. These two for a period of time after the death of G. W. Peckham carried out a series of negotiations looking to the satisfactory adjustment of all these matters of defalcation by the former trustee so that it would not come out and be generally known, and the fraud of the deceased trustee would be concealed. The substitute trustee finding that the bank had not applied certain checks upon the trust's note to the bank, and further finding additional discrepancies so that the total considered by him to be a discrepancy was $19,826.67, being the aggregate amount of the checks which were shown by the books to have been applied upon notes payable to the bank, but which were in fact not so applied, and the sale price by the trust of two royalties shown on the
1382 books during Peckham's lifetime to have been accounts receivable by the trust, but which the substitute trustee fund Peckham had personally collected and retained. This discrepancy was called to the administrator's attention and the bank agreed to back Scannell up in the thing and it was agreed that the matter be concealed, the stockholders not being notified and the public not advised with a view to repaying the then considered defalcation out of the proceeds of a life insurance policy more than $100,000.00.

26.

The substitute trustee told an attorney that there was this $19,826.67 discrepancy and obtained the services of such attorney to prepare a proof of such claim to be filed with the administrator but said substitute trustee did not tell said attorney any of the other facts herein elsewhere pleaded and did not ask advise concerning the rights of the stockholders, nor of the trustee's duties as substitute trustee with respect to all of the facts herein pleaded but simply requested said attorney to prepare a claim to be filed for and covering specified items totaling as above shown. Said account was filed at a time when it was agreed by and between the substitute trustee and the ad-

ministrator of Peckham's estate that the fraud of Peckham would be concealed so that it would not become generally known and the existence of the $100,000.00 life insurance money and the administrator's promise to endeavor to work payment of the discrepancies out
1383 of such life insurance money, and other facts herein elsewhere pleaded, lulled the substitute trustee into inactivity, and he actively joined in a continuation of the concealment of the former trustee's fraud. He did not know what his rights were, and assumed and believed that Peckham had the right to deal between himself individually and himself as a trustee without authority from, or notice to his stockholders. He further believed that he had no alternative as trustee but to accept the properties that Peckham had conveyed to his trust, nor did he know that he could do other than to claim Marlborough Addition and/or its stock equivalent in the Texas Investment Company. He was without counsel and without advice when, with J. T. Harrell and the bank's lawyer, a stockholders and directors meeting was called and he was elected President of Texas Investment Company, was issued as trustee one-half of the capital stock of the corporation, which in the meeting he indorsed as collateral security to the note herein sued upon, and which note he also indorsed as substitute trustee. He subsequently renewed it some three or four times and paid thereon moneys of the trust at a time when he was wholly oblivious to his rights and when he was joined in an effort to further conceal the facts from the stockholders.

27.

Finally when the bank had gotten him to renew several times the 1926 notes and the Texas Investment Company notes, had gotten him to accept stock in Marl-
1384 borough Addition and had written up the minutes under the direction of counsel for the bank, and when the trust had been tied in every possible way that under the circumstances it could be tied without disclosing to the stockholders what had transpired, the

bank filed suit to collect the notes, first selling under the pledge all of the capital stock of Texas Investment Company to the bank and here suing for a deficiency existing after applying against the notes the bid of the bank.

28.

The bank then sued out an application for the appointment of a receiver and persuaded a district Judge improvidently to grant such receiver, and which receiver took from the possession of said substitute trustee all of the books and records of the Company and the possession of all of the assets of the Company.

29.

It was at this time that the substitute trustee for the first time sought advise to determine what rights, if any, the stockholders had, and what duties, if any, he owed the stockholders in protecting them against the former frauds of his deceased friend. It was then for the first time that Scannell disclosed to any attorney the facts and circumstances herein elsewhere pleaded. Thereupon and without delay, the substitute trustee answered the bank's suit, pleading want of consideration and non est factum to the obligation declared upon by the bank, pleaded the facts herein pleaded in cross action against the bank
1385 and advised by letter the stockholders of what had transpired and what action he had taken, the stockholders by letters commending his action in bringing the suit.

30.

We here now present Wichita Royalty Company's account with defendants in cross action:

Item	Cr.	Dr.
Loans to Peckham deposited in trust account	$40,000.00	
Trust checks listed above drawn on and payable to the bank..		127,529.40

Trust checks listed above drawn by and payable to G. W. Peckham		9,238.16
Payments made by Peckham on liability account of trust with bank (S. F. 520-522)	6,821.22	
Portion of voucher No. 427 accounted for	3,000.00	
Check payable to Security Nat'l Bank where Peckham credited		6,000.00
Check to Marlborough Addition ..		1,500.00
Check to Texas Investment Company		500.00
Escrowed trust funds in bank deposited to Peckham's account		6,048.00
Cashier's check for Bristow royalty deposited to Peckham's account		6,000.00
Cost price Stephens Royalty	22,407.00	
	$72,228.33	$156,815.56
Deposit Balance	84,587.23	

The checks above pleaded as having been wrongfully charged against the trust deposit and credited to the private account of the trustee through the facilities of the bank and its active participation in the fraud were wholly inoperative to lessen the trust's deposit balance with the bank. Neither during Peckham's lifetime, nor during the period of concealment under the direction of the substitute trustee, was there any demand upon the refusal to pay by the bank the moneys deposited and the difference between the trust's monies deposited to the account by Wichita Royalty Company and checks authorized to be charged against such deposit for the $84,587.23 balance, for which cross complainants nerein sue. In other

words, there has been no authorized demand and refusal to pay the aggregate deposit represented by the checks listed above as having been charged against the account without authority and said deposit account, and the bank's implied obligation to repay the same upon demand was not lessened by either of the checks above set out, and this suit is brought specifically for the recovery of the trust deposit balance with the bank, as well as for the bank's active participation with Peckham in breach of the trust.

32.

Cross complainants say that not a single stockholder of Wichita Royalty Company, other than the trustee, ever knew, prior to the institution of this suit, of any
1387 of the facts herein pleaded; that such facts were concealed from them; that such facts were well known to the bank, its officers, agents and employees; that the facts were themselves self-concealing; that the bank knew the monies deposited to Wichita Royalty Company's account were trust funds and that G. W. Peckham was but the trustee thereof, representing parties beneficially interested and in the fiduciary capacity. The bank further knew that the trustee had no right to use trust funds for personal purposes—the bank knew that Peckham had a personal account in the bank, a deposit checking account and also a note or liability account. It knew that Peckham over a long period of time, and in a series of transaction, all having the same character and involving the same element or plan was transferring large sums of money from the trust account to his personal account and usually at times when his personal account was in need of additional funds. The bank actively and knowingly aided him in making the transfer. Most of the checks were made payable to the bank's order. The bank knew the trustee was commingling trust funds with his personal funds, and knew that it was actively assisting him in doing so. It knew that Peckham was drawing

checks on his personal account for personal purposes, an account which it knew was commingled funds. It further knew that every payment made from the commingled account for personal purposes would amount to a wrongful conversation of trust funds. It knew that Peckham was indebted to it in large sums of money and that he was making payment on this debt from time to time
1388 to the bank by drawing checks on his personal account, which it knew was commingled funds of personal funds and trust funds. It knew that he was using trust funds to pay a private debt. It knew that Peckham's personal credit rating would be increased by its participation with the trustee in transferring trust funds to Peckham's relatively small personal balance, monies which the bank knew he did not own. The bank aided him in making these transfers and then accepted his checks in payment of his personal debt to the bank.

33.

That the City National Bank in Wichita Falls, Texas, has assets and assumed the liabilities of the City National Bank of Wichita Falls. Texas.

Wherefore, plaintiff prays that citation issue to those not heretofore served herein, and that upon the trial hereof, this Court enter judgment denying the plaintiff any recovery against cross complainants, and giving to cross complainants judgment for their debt, interest, costs of suit, and for such other and further, general and special, regular and equitable relief, to which, in the premises, under the facts and upon the law they may be entitled to recover from the several parties hereto, including decree of voiding the binding effect of each and every transaction above pleaded, and voiding the effectiveness of any and all conveyances from Peckham as an individual to his trust, and in honor bound will ever pray.

KILGORE & ROGERS,
Attorneys for Cross Complainants.

1389 State Of Texas,
County Of Wichita.

Guy Rogers, being duly sworn on oath says: That he is attorney of record for cross complainants in the above pleading and that the facts therein stated are true.

(Signed) GUY ROGERS.

Subscribed and sworn to before me this 14th day of September, 1934.

(Signed) GRACE JARNAGAN.
(Seal) Notary Public, Wichita County, Texas.

The Witness:

So far as I know, this Wheeler and Gray County properties are producing, I don't think we have collected anything, I couldn't tell you how many wells. I think we gave a deed of trust on our Texas properties. My memory is that it was sold under the mortgage, you will have to get the instruments and find out about it. I will attempt to find out for you when this property became valuable. This instrument marked "Plaintiff's Exhibit 27" deed of trust, dated December 6, 1933, is the deed of trust given on the Texas property. It does not recite any specific interest. It was filed for record April 4, 1934, recorded April 9, 1934. This property, along with other interests we might have in Archer, Young, Gray and Wheeler Counties, and other personal property was sold to Guy Rogers under the will of L. T. Rogers for $250.00 on August 7, 1934, as shown by Exhibit 28. I think that is all the property we had in Wheeler and Gray Counties and it was our intention for that instrument to cover all of those properties and convey whatever interest and title we might have. I only meant to protect Mr.
1390 Black in so far as we could for his assistance in the defense of this lawsuit, it does not specify any specific interest. I think Mr. Black knew of the existence, at least, of this lawsuit, if not what title we might have had. We had the deed, whatever they reflect.

As to whether or not in paragraph 2 of Defendant's Exhibit 150, we tendered back the Wheeler County properties, I will say that the instrument will show for itself, that is what we intended to do when we filed the instrument.

I have the conveyance here for No. 93, to George Peckham, and some way or other we missed the royalty conveyance from Peckham to the Wichita Royalty Company. Plaintiff's Exhibit 99 is the royalty and the lease, I think we have both the lease and the assignment. Plaintiff's Exhibit 99 is an assignment for an oil and gas lease, dated October 8, 1925, from George W. Peckham to Wichita Royalty Company. That is the Ellis County, Oklahoma property, that cost $160.00 and it is part of check No. 554, dated December 2, 1926, for $1,500.00. That conveyance was filed for record November 6, 1926; our assignment to the Wichita Royalty Company was of record in Oklahoma, the county where the property is situated, on November 6, 1926. We did not pay for it until December 2, 1926. George Peckham paid $160.00 to A. A. Peard on November the first, on this same property. I think there was development somewhere around that property when we secured it, some development in the neighborhood, the price would indicate that it was not very
1391 valuable. This is one of the items in this lawsuit.

I don't remember whether I testified in the former trial that this was in very likely looking territory for oil purposes or not, I think I sent out a letter notifying the stockholders of the purchase of this property, it belonged to the Wichita Royalty Company at that time. The letter was dated March 15, 1927. At that time, I thought it was in likely looking territory, I have since learned that George Peckham paid every dime we paid. George Peckham's check is dated November 1, paid November 9, $160.00.

No. 94, Plaintiff's Exhibit 42, is an assignment from George Peckham to the Wichita Royalty Company for a five year limited royalty in Hartley County, dated August 7, 1926, acknowledged December 15, 1926, and

recorded December 21, 1926. We made the following report on March 15, 1926, to the stockholders, "One of the most promising geological structures in the Panhandle is located in Southeastern Hartley County and we have secured one-half of royalty on Section 54, of the Bravo Ranch Lands in Southeastern Hartley, a number of tests have been started in this district, and successful completion will mean much to the Wichita Royalty Company." Mr. Peckham was the trustee, and that was his information, I never was up there in my life. Plaintiff's Exhibit 40, we paid for that, a check made to the City National Bank, check for $1,920.00, dated December 7, 1926, the voucher reading, "Royalty owned in full pay-
1392 ment of one-half of royalty on 640 acres in Hartley County, Texas, $1,920.00." That check was paid on December 15, 1926, and that is the date of the cancellation made payable to the City National Bank. This conveyance which you now hand me is an assignment from Joseph N. Perkins and covers section 54, 1/16th royalty, Bravo Ranch Lands, Hartley County, Texas.

Mr. Boone:

We offer the instrument in evidence.

DEFENDANT'S EXHIBIT 151.

From Joseph M. Perkins of Eastland County, Texas, to G. W. Peckham, Wichita County, Texas.

Consideration $10.00 and other valuable considerations.

Conveying an undivided 1/16th of all the oil and gas produced or that may be produced from the following described land, to-wit:

All of section 54, as the same is shown by the W. D. Twitchell map of the Sub-divisions of the Bravo Ranch

lands, located in Hartley County, Texas, containing 640 acres, more or less.

To continue five years from August 7, 1926, unless oil or gas or other minerals are found in producing quantities, or as long thereafter as same may be produced.

Dated August 7, 1926.

Duly acknowledged.

Filed for record December 31, 1926. 9:00 A. M.

1393 Recorded December 31, 1926, at 11:30 A. M.

The Witness:

Plaintiff's Exhibit 39 shows a draft on G. W. Peckham for $1,920.00, and reads, "October 4, 1926, draft papers, account G. W. Peckham $1,920.00." That was paid December 15, 1926. Our check was paid for $1,920.00 on December 15, 1926, the same date the check was canceled, made on December 7, 1926. Our check is Plaintiff's Exhibit 40. Check No. 563, is dated December 28, and the voucher reading, "Recording fees, to recording fees from J. N. Perkins to G. W. Peckham and from G. W. Peckham to Wichita Royalty Company for one-half of royalty on Section 54, Bravo Ranch land, Hartley County, Texas, for $2.00." It is payable to the County Clerk of Hartley County, Texas. At the time we acquired this conveyance of this Hartley County Royalty from George Peckham, we likewise received at the same time a deed from Mr. Peckham, and sent most of them up there to be recorded. I think the way the matter was handled, that Mr. Perkins had drawn a draft on George Peckham with that deed attached, through the City National Bank and the royalty company paid the City National Bank for that deed, and Mr. Peckham immediately executed a deed to the royalty company. There was some development going on up there when the property changed from pos-

sible production to dry holes. I don't know when the hole was completed. That was well No. 1. The information recited in the report of March 15, 1927, that these wells were being drilled, is the information I got from Mr. Peckham. I do not mean to testify that this well was completed as a dry hole before December 31, 1926.

The next property is No. 95, check No. 583.
1394 There is not any assignment, as far as I know, for that property from G. W. Peckham. My memory is that is one of the properties for which we received no assignment. The property is located in Archer County. On our voucher No. 550, dated November 20, 1926, check made to the City National Bank in the amount of $7,500.00. On the voucher our information, royalties owned, property No. 95, being 3/16th interest in the leasehold estate eighty acres, east half, block 10, North Anderson Ranch lands, S. P. Survey, Archer County, Texas, $5,000.00. Also on the Porter royalties owned property No. 96, to apply on purchase of one-fourth of royalty of the Southwest sixty acres of E. Polk land, District 717 of William Polk preemption survey, Archer County, Texas. Also one-fourth of seven-eighths leasehold estate on the west forty acres of the same land, $2,500.00—total $7,500.00, which check was for properties Nos. 95 and 96. Check No. 583, dated March 1, 1927, made to the City National Bank for $301.80, and the voucher reads, "Royalties owned, property No. 96, last payment on purchase of one-eighth royalty on the southwest sixty acres E. Polk land, Abstract No. 717, William Polk preemption survey, Archer County, Texas, also 1/4th of a 7/8th leasehold estate on the west forty acres of the same land. This payment, together with checks 550 and 554, makes a total cost of $3,000.00 for the above interest. That is No. 96. Check No. 554, on property No. 96, the voucher reads, "Royalties owned, Property No. 96, to apply on purchase
of 1/4th of royalty on the southwest sixty acres
1395 E. Polk land, Abstract 717, William Polk preemption survey, Archer County, Texas. Also 1/4th of the 7/8th leasehold estate on the west forty acres

of the same land, $198.18." There is one check there of $1,500.00 and only $198.00 and some cents were applied, together with $301.82, and $7,500.00, makes $8,000.00 these two pieces of property cost Wichita Royalty Company. I do not have any conveyance from F. O. Harrell to these properties, I will see if I can find one.

Property No. 97, concerns a conveyance of certain properties in Wichita County, Texas, dated April 15, 1927, Defendant's Exhibit 44. We paid $3,000.00 for that, the check payable to B. L. Fain. No. 598 for $500.00, made to B. L. Fain is indorsed by B. L. Fain. No. 602 made to B. L. Fain for $1,000.00 is indorsed by B. L. Fain and under it George Peckham, the B. L. Fain does not seem to be his signature. That check was deposited to the credit of G. W. Peckham April 23, 1927. No. 607, dated May 6, B. L. Fain for $500.00, is indorsed B. L. Fain and under it G. W. Peckham and the signature of B. L. Fain is not his, not his handwriting, and the check was deposited to the account of G. W. Peckham, paid May 6, 1927. Check No. 60 dated May 16, 1927, to B. L. Fain for $1,000.00 is indorsed B. L. Fain, and under it G. W. Peckham, and it is not B. L. Fain's signature; the check was deposited to the credit of G. W. Peckham on May 18, 1927. I do not know whether B. L. Fain owed G. W. Peckham any money or not. Those checks were
1396 all given in April and May, 1927. Plaintiff's Exhibit No. 188, his check, is dated April 22 and paid on April 23, G. W. Peckham to B. L. Fain for $1,000.00. This check for $1,000.00, it occurs to me that one of these for $500.00 is indorsed by B. L. Fain and the other three are G. W. Peckham, and went to his account; this $1,000.00 check here and the five hundred dollar check there would show that they had a 50-50 interest in that piece of property—I am not trying to insinuate that George Peckham had a fifty percent interest in it, I am only trying to give you all the information I can from these checks. I do not know whether George Peckham was advancing B. L. Fain any money or not, but I feel confident that he was not. As far as I know, that is all we paid on the property.

Property No. 98, that is the Pecos County property, Check No. 732, here is the certified copy of the assignment from B. L. Fain, dated July 20, 1928, to G. W. Peckham, trustee for the Wichita Royalty Company covering one-fourth interest in royalty and other minerals in section 206, block 3, certificate No. 1-632, issued to the Texas and Pacific Railway Company and containing 640 acres of land. The check we paid B. L. Fain for that is No. 732, dated July 20, 1928, issued to B. L. Fain in the amount of $640.00, and indorsed by B. L. Fain, cleared through our account in the City National Bank on July 21, 1928. All those properties were reflected on the books of the Wichita Royal Company. This is the last property we bought, No. 98, July 20, 1928. From July 20,
1397 1928, as well as prior thereto, our voucher records and our property records and the entire books of the Wichita Royalty Company, reflect every piece of property we have bought—some of those assignments we do not have, I do not know of any of the properties that are held in the names of others, other than what we found out about some of these pieces, as reflected by the records. Under proper procedure, I imagine anyone interest in the Wichita Royalty Company could have inspected our records. At no time has any stockholder ever requested me to file this lawsuit, it was my duty to look after the interests of the Wichita Royalty Company as a specific trust in me, and it was part of my duties to see that the stockholders' interests were represented, regardless of my personal inclination. I can give you the amount I have received from the Wichita Royalty Company since George Peckham's death.

I received on December 31, 1929, $400.00, I also received the following amounts: No. 875, January 21, 1930, $200.00, indorsed by me; No. 883, January 31, 1930, $200.00; No. 889, February 15, 1930, $200.00; Check No. 892, February 28, 1930, $200.00. Check No. 896, March 15, 1930, $200.00; March 31, $200.00; April 15, 1930, $200.00; No. 905, April 30, $200.00; No. 909, May 15, 1930, $200.00; Check No. 912, May 31, 1930, $200.00; I received

the money on all of the above checks. Check No. 917, June 14, 1930, $180.00, it shows stenographic hire and handling office and business of Wichita Royalty Company, since 1929, that is the girl's money. I cash-
1398 ed it, and got the money as far as the bank is concerned, it says there it is for stenographic hire. I paid her personally until I got the money. I will have to hunt the check up for you. I received the money on the following checks, No. 918, June 13, 1930, $200.00; No. 922, June 25, 1930, $200.00; No. 931, July 16, 1930, $200.00; No. 936, July 31, $200.00; Check No. 939, August 15, $200.00, that is the indorsement of H. C. Richardson on that check, he is bookkeeper; check No. 940, August 30, 1930, I received $200.00; Check No. 949, September 18, 1930, $200.00; check No. 953, September 29, 1930, $400.00; check No. 958, October 16, 1930, $200.00; check No. 963, November 15, 1930, $200.00; check No. 968, December 1, 1930, $200.00; check No. 969, December 15, 1930, $200.00; Check No. 973, December 30, 1930, $200.00; check No. 974, January 9, 1930, $145.00; Check No. 978, says, "Void," dated January 14, 1931, I got the money on it, it was paid in cash and not run through the bank. I received the money on the following checks, No. 983, March 24, 1931, $100.00; No. 986, April 1, 1931, $150.00; No. 992, April 15, 1931, $200.00; No. 994, April 20, 1931, $100.00; No. 999, May 20, 1931, $200.00; No. 1,005, June 12, 1931, $140.00, that check was paid on my indorsement, I don't know whether I got the money on that or not, I imagine I did. It was paid by the bank 6-13-31. I also got the money on the following checks, No. 1006, June 15, 1931, $60.00; No. 1008, July 1, 1931, $200.00; No. 1013, July 31, 1931, $200.00; Check No. 1016, August 31, 1931, $200.00; check No. 1018, October 1, 1931, $200.00;
1399 check No. 1,020, October 7, 1931, $3.35, the record shows that that was for miscellaneous expenses, Court decree, dissolving receivership October, 1931, Court receiver's certificate, filing case for old records, $1.75. I indorsed those checks. I received the money on the following checks, No. 1023, October 29, 1931,

$200.00; Check No. 1026, December 1, 1931, $200.00; Check No. 1,027, January 1, 1932, cashier's check First National Bank for $225.00, I will say that $25.00 of it was for payment of office rent to January, 1932, and $200.00 was clerical and trustee salary for the month of December, 1931, I think that was my $200.00. I received the money on the following checks, No. 1028, February 2, 1932, $200.00; No. 1032, February 25, 1932, $95.00, that shows to be office expense during the month of February as per statement attached. On February 23, 1934, I received a check for $150.00 and got the money on it. I am unable to locate checks 1,043 and 1,047. On February 28, 1934, I received a check for $150.00 and got the money on it, that was 1,043. I also received the money on the following checks, No. 1,044, April 14, $256.94—that is the one that is missing. Check No. 1,045, June 5, 1934, $273.56; check No. 1,046, to the Royalty Company, dated October 20, 1934, $578.39; Check No. 1,050, May 29, 1935, I received a check for $541.92 and the check says, "Miscellaneous expense, transferred to cashier's check to avoid possibilty of garnishment by City National Bank, to be pro rated to expense later." I will have to trace that out for you. Check No. 1,051, on May 29, 1936,
1400 and there was check No. 1,051 of the Royalty Company's made to E. E. Scannell for $2,860.56, that is to E. E. Scannell, trustee, and marked "Canceled." Attached to this check is a check dated May 29, 1936, payable to E. E. Scannell, trustee, $2,860.56, signed Wichita Royalty Company by E. E. Scannell, trustee, I don't know what that is for, to be held for accounting and distribution. I think it was run back through the account, it was taken out by the other, and transferred to cashier's check to avoid the possibility of garnishment by the City National Bank, to be pro rated to expense later. I will look up check No. 1,052. This check for $28.90, to the Stone Printing Company for five hundred letterheads, for $4.50, Railey Printing Company, Culner Pad, 50c Heydrick Mapping Company Archer and Wilbarger County maps, $10.00. Postage $11.00. Trip to Archer County and

Graham on taxes, $10.00. Protest fee on Continental Oil Company check in the amount of $2,640.03, $2.90, making a total of $38.90. There appears to be a check here No. 1,054, payable to E. E. Scannell, trustee, for $1,508.71, signed Wichita Royalty Company, by E. E. Scannell, dated June 6, 1934, which is marked "Canceled." Attached to that is another check that was paid June 6, 1936, for $1,508.71, paid to C. C. Wichita Royalty Company, by E. E. Scannell, trustee. That check, like the others, was transferred to a cashier's check to avoid the possibility of garnishment temporarily until such time as the amount could be pro rated to expense. Check No. 1,054, for $256.94, I got the money on that. The
1401 cashier's check was in the name of E. E. Scannell, I will trace and show you what became of that money. Check No. 1045, dated June 7, 1934, for $273.56, signed Wichita Royalty Company, by E. E. Scannell, payable to E. E. Scannell and cashed, I got the money on that. Check No. 1,045 was dated June 7, 1934, the next day after the voucher was made. There is another check No. 1,055, dated May 31, 1936, for $563.47, payable to E. E. Scannell, trustee, cashier's check. It shows to be converted to cashier's check and pro rated to expense, I will be glad to look that up. The next check is 1,061, dated June 30, 1936, $69.55, payable to E. E. Scannell, was accounts payable of Cleo Bowers for stenographic work; distribution on that check is for office supplies from Railey, $1.55, Storm Printing Company, $5.00. Postage, $3.00, Cleo Bowers, $50.00 and $10.00. I think I gave those people my personal check, I will be glad to look them up. Check No. 1,064, $50.00, is marked traveling expense to apply on traveling expenses to Oklahoma City and Tulsa and Tonkowa and Ponca City, June 25 to 28, traveling expense July 3, to Oklahoma City and Okmulgee, I went up there. I cashed that check at the Western Union. Check No. 1,072, $109.81, payable to E. E. Scannell, trustee, dated January 5, 1937, converted to cashier's check to be used in connection with the lawsuit of Wichita Royalty Company versus City National Bank,

details to be furnished. I still have that cashier's check—on the First National Bank of this city. I think I also have another cashier's check for $75.00 on the
1402 same bank. I do not have any currency that belongs to the Wichita Royalty Company, they do not have any money in the bank. On May 31, 1932, Journal Entry No. 8, $50.00, I think that was a cashier's check, I will look into that for you. There was a suit in progress in 1932, we did not have any money where it could be attached. Journal Entry No. 14, 5-31-32, $1,359.57, I think that was money held in cashier's check, I will look into that. The item of $1,015.04, May 31, 1933, I did not personally receive the money; on journal entry—I will read you journal entry and the totals of the amount I had on hand, cash $115.00, paid legal services, debit $115.48. Turned cashier's check over to Guy Rogers, cash on hand, credit $108.58, accounts payable to debit, $108.50, turned cashier's checks over to E. E. Scannell, I will have to check that out and let you know what I did with it. The amount is $108.58, cash on hand, debit $311.33, oil and gas income credit $311.33. December, January, February, $115.48, $108.58, $87.27; I think those were cashier's check, cash on hand, debit $96.22, oil and gas income credit $96.22, oil runs March, 1935. This one is May 31, 1933, that you are asking about, something is written in here somewhere, that is what Mr. Lambert said it was, I will try and give you those entries. That is $1,015.04, May 31, 1933, as I understand it, that item is cash that was on hand, and what I am reading is the way it was distributed out in 1934, and 1935. You will have to give me some idea as to what you want, I can show how the money was distributed when it came in
1403 to me, but the item of so much money in a lump sum, I cannot identify it—journal entry No. 5, May 31, accounts payable debit $1,015.04, reads, "To apply cash on hand to accounts payable which cover salaries and office expense in account as received and on hand." That was just a book entry and I had the money in cash—May 1, 1933—It means cashier's check. Before I testify

to any of that, I want some time to figure out and show you what was done with that money.

I think I first employed Mr. Davenport as a lawyer, somewhere around March, 1930. I also employed Guy Rogers about that time, about June, 1930, I think Mr. Davenport went out and Mr. Rogers took over the case. I don't remember whether John Davenport was representing me in the trial of this cause in 1932 or not, I think he was defending me personally. I told my lawyers about these transactions. When this suit was first filed by the City National Bank, it was only in regard to the $19,000.00 shortage that George Peckham had and as I remember it, we went into only that section of it. It later developed, after Mr. Rogers came into the case, that we were entitled to recover some other part—the Marlborough Addition deal and on some of these transactions, I think the pleadings themselves show what we claim, I don't recall all of the details. I employed Guy Rogers to look after the legal interest of the Wichita Royalty Company and took up with him the respective transactions.

I think the Porter Ranch was included and the
1404 Stephens Royalty and the Marlborough Addition, the Gray County Royalties, everything back to 1925. To the source of that note on which we were being sued, known as the $25,000.00 note, executed in March, 1926. I think we paid Mr. Rogers along as we could. I see here check No. 923, payable to Guy Rogers, dated June 25, 1930, and bears his indorsement, I think that is about the time I hired him. I think I have a written contract with him, I don't remember, I do not have the copy, I think it can be gotten. I talked to John Davenport a number of times, and he was paid, I couldn't tell you the date I gave John Davenport a check. On June 24, we gave Davenport and Crane, our check No. 921, for $500.00, legal services in the case of City National Bank versus Wichita Royalty Company, advise with reference to matters of shortage in the account of G. W. Peckham, trustee. That was a Wichita Royalty Company check. I do not know that I gave John Davenport my personal

check for representing me. So far as I know the Wichita Royalty Company never paid it. John Davenport represented the Wichita Royalty Company, he represented me personally, as I understand in the trial he only sat in looking after me. I did not employ him to try the lawsuit. Also here is check No. 932, July 17, 1930, Davenport and Crane, legal services in connection with settlement of suit and dismissal thereof, City National Bank versus Wichita Royalty Company. $200.00. Also check No. 941, to John Davenport, September 2, 1930, and says, "Legal services in connection with recovering title and other matters in re Peckham estate, $250.00."
1405 We paid John Davenport according to that, $950.00. Also here is check No. 952, September 29, 1930, to Kilgore and Rogers, $600.00. On October 16, 1930, Kilgore and Rogers, check No. 557, $400.00, "Legal services in connection with suit, City National Bank versus Wichita Royalty Company, $400.00." On November 15, 1930, check No. 965, made to Kilgore and Rogers, and reading "Legal services in connection with Peckham estate and City National Bank."

Mr. Rogers:

We offer it in evidence, with the indorsement, this check, Defendant's Exhibit 152.

DEFENDANT'S EXHIBIT 152.

Wichita Royalty Company, 1002 Staley Building, No. 965. When properly indorsed pay to the order of Kilgore & Rogers $200.00. To the City National Bank, Wichita Falls, Texas. Wichita Royalty Company, Wichita Falls, by E. E. Scannell, for trustee. (Indorsed) Kilgore & Rogers, by Jno. E. Kilgore. Davenport & Crane, by John Davenport. "1" "3" Perforated Paid 11-18-30.

The Witness:

I think we were going into these matters with attorneys along from November 30 to November 15, 1930, and doing my best to explain the matter to them.

I have the last check paid on the Porter Ranch, Property No. 83. I have check here, No. 970, $102.83, to W. T. Knight, Attorney in fact, December 17, 1930, and the voucher shows, "To our proportion of assessment for 1930 on the M. L. Porter Ranch, per statement
1406 attached, interest paid." I don't remember just when Guy Rogers came into this thing. Check No. 923, dated June 23, 1930, to Guy Rogers, says, "Legal services in regard to Peckham matters, and suit of City National Bank." I think there were two suits; this is suit 24,201-C, City National Bank of Wichita Falls versus Wichita Royalty Company, I think it is still a part of this suit here, but it says, this suit here, I looked at the record at noon and it says that this 24,201-C was dismissed on July 9. By check No. 952, I paid Kilgore and Rogers $600.00 for legal services in connection with settlement of George Peckham controversy with the City National Bank. I don't know whether that is the same thing involved here or not, those are legal technicalities that I cannot tell much about. We have a cross action against the City National Bank. Check No. 964 was issued to me for $23.25, and it says, "Legal expenses additional costs advanced in perfecting the title to interest in Porter Ranch in Archer County, paid to Davenport and Crain, November 4, 1930." I don't know whether we were claiming the Porter Ranch at that time or not, we were trying to get title, or something was being done, and I turned it over to Mr. Davenport and I think he was handling it. Check No. 942, dated September 2, 1930, county clerk Archer County, $20.00, legal services, filing deeds in connection with recovery title to Porter Ranch, Archer County, Texas—there was some legal technicality about that at that time, that was being settled in Archer County at the courthouse. You might ask Mr. Daven-
1407 port about that. I don't know as anything was being done with the Porter Ranch, I think it is involved in this lawsuit. Journal entry No. 6, in 1932, I wrote that, it is in my handwriting, February 1, 1932, and I wrote, "Profit and loss, $2,170.82. Notes payable

$1,841.68." Land in fee $4,012.50 credit which is the total of the other two items under which we wrote, "to surrender our interest in Porter Ranch, Archer County, Texas, was deed assigned, executed and turned over to W. T. Knight, reference made to lawsuit City National Bank versus Wichita Royalty Company, March 15, 1932, in 78th District Court." If there is a deed to W. T. Knight, I would like to see it. I will have to trace that out for you. I could not say that I wrote down there that we had executed and transferred in February, 1932, to W. T. Knight all of our interest in the Porter Ranch. I did write that on the ledger journal entry No. 6, 1932, it may have been just a book entry, or it means something else was done with it, probably. I will have to check into that to see what was done with it. After refreshing my recollection, I cannot recall that it was ever turned over to Mr. Knight, if you have an instrument to that effect, I would like for you to produce it, or if you will allow me to talk to Mr. Knight I will try and see what happened.

Mr. Rogers:
We admit that Mr. Scannell was served with citation in suit No. 24,201-C, on June 23, 1930, by the Sheriff of Wichita County, Texas.

Mr. Boone:
The suit was returnable on July 7, 1930. Do
1408 you admit that?

Mr. Rogers:
Yes.

Mr. Boone:
We offer in evidence the petition in suit No. 24,201-C, Defendant's Exhibit 153:

1409 DEFENDANT'S EXHIBIT 153.

In the District Court of Wichita County, Texas, for the 89th Judicial District. July Term, A. D. 1930.

The State of Texas,
County of Wichita.

To the Honorable P. A. Martin, Judge of said Court:

Comes the City National Bank of Wichita Falls, Texas, hereinafter styled plaintiff, complaining of the Wichita Royalty Company, a common law trust, whose sole trustee is E. E. Scannell, who resides in Wichita County, Texas, hereinafter styled defendant, and respectively presents to the Court:

I.

The plaintiff is a corporation duly incorporated under the laws of the United States, doing a general banking business in Wichita Falls, Wichita County, Texas.

II.

That the Wichita Royalty Company is a common law trust estate, operating under a Declaration of Trust, recorded in the Deed Records of Wichita County, Texas, in Volume 168, pages 56 and 58, and that E. E. Scannell is its sole trustee, duly appointed and qualified as such, and is a resident citizen of Wichita County, Texas, and has sole authority and power to manage, control and liquidate said trust.

III.

That said trust is engaged in the general business of buying and selling lands, oil properties, mineral
1410 rights and royalties, as evidenced by the powers set forth in the Declaration of Trust, aforesaid.

and that said Declaration of Trust Specifically provides, among other things, that the assets and properties are charged with all of the debts and obligations of said trust estate.

That said trust has been generally engaged in the purchase of royalties, stocks, bonds, real estate and is now the owner of certain oil lands and interests and royalties, a full complete detailed and itemized list thereof being hereto attached, marked Exhibit "A" and made a part of this petition, and here referred to for all purposes.

That in addition to said properties, the said defendant is the owner of one-half of the capital stock of the Texas Investment Company amounting to 325 shares, which is a corporation duly incorporated under the laws of the State of Texas.

IV.

That on or about the 24th day of February, A. D. 1930, the defendant, acting by and through its sole trustee, E. E. Scannell, for a valuable consideration made, executed and delivered to the plaintiff a certain promissory note dated February 24th, 1930, due ninety (90) days after date, payable to the order of the plaintiff for the principal sum of $26,846.20, with interest from date until paid at the rate of eight (8%) per cent. per annum, which note further provides for ten (10%) per cent. additional upon the principal and interest as attorney's fees, if sued upon or placed in the hands of an attorney for collection, which note was, and is a renewal of an indebtedness owing by said defendants to the plaintiff herein, for money borrowed by said defendants in due and regular course of business.

1411

V.

That to secure the payment of said note, and all renewals and extensions thereof, the defendant made, exe-

cuted and delivered to J. T. Harrell, Trustee, a deed of trust, dated July 24th, A. D. 1925, upon the following described lands and premises, to-wit:

Full over-riding royalty covering 40 acres, Lot No. 4 of the South 100 acres, Sarah Tankersley Survey, Abstract No. 278, recorded in Vol. 84, pages 254-6 Deed Records of Young County, Texas;

9/32 of 1/8 fee royalty in 160 acres, known as R. D. Owen Survey, Abst. 2245, and being known as BRIR Survey No. 38, and the same having been patented to R. D. Owen, October 29, 1919, and said patent duly recorded in Volume 80, page 249, of Deed Records of Young County, Texas;

1/8 of the 1/8 Fee Royalty in 80 acres known as the south half of the J. A. Harkness Survey, Abstract 1442, and patented to Albert Owen, Patent No. 1412 ..... and which is recorded in Volume 2, page 537, of the Deed Records of Young County, Texas.

1/8 of the 1/8 Fee Royalty in South 80 acres, G. L. Aynesworth Survey BRIR No. 49, Abst. 1948, patented to J. A. Driver, Assignee, dated Aug. 13, 1913, Patent No. 3, Volume 47, Young County, Texas.

1/16 of 1/8 Fee Royalty in 50 acre tract, known as a part of the Pedro-Varela XI League Grant, recorded in Deed Records of Limestone County, Volume 140, page 617, known as Ellis Tract, Mexia, Texas.

which deed of trust was duly filed for record in the Counties where said lands were situated, and is a valid lien upon said lands and premises above described.

VI.

That the note hereinabove described is past due and unpaid, except the sum of $1,000.00 was paid thereon on

April 10th, 1930, and the plaintiff has placed said notes in the hands of attorneys for collection, and has agreed to pay said attorneys the sum of ten (10%) per cent. upon the principal and interest as attorney's fees, if sued upon or placed in the hands of an attorney for collection.

1413 VII.

That by and under the terms of said deed of trust, the plaintiff has, and is seized with an equitable lien upon all of the other assets of said defendant to secure the payment of said note.

VIII.

That the said defendant is also indebted upon other obligations as maker and indorser among which is an obligation of the Texas Investment Company for $23,500.00; another obligation of the Texas Investment Company for $5,000.00; another obligation of the Texas Investment Company for $5,000.00.

IX.

That said defendants, the Wichita Royalty Company and E. E. Scannell, sole trustee, do not have sufficient assets to pay said indebtedness in the ordinary course of business, and cannot realize or well, within a reasonable length of time, sufficient assets with which to pay its obligations, and is in an insolvent condition.

X.

That its properties are producing oil properties, and are being depleted—that is to say, that oil is being produced therefrom and said properties are being depleted, and said properties and assets, as well as the Wichita

Royalty Company should be placed in the hands of a Receiver to take charge of, conserve the same, and liquidate the indebtedness, pending this litigation; that
1414 said Receiver is necessary for the reason that said Wichita Royalty Company is insolvent, or is at least threatened with insolvency, and that the said defendant has no ready assets with which to pay its obligations.

Wherefore, premises considered, the plaintiff prays for citation, for notice of this application, and for an appointment of a Receiver to take charge of, administer, conserve the assets and collect the proceeds thereof, pending this litigation, for a judgment against the defendant for the amount of the plaintiff's debt, interest, attorney's fees and costs of suit, for the fixing and establishment of a lien upon all of the assets of said defendant, for the satisfaction of this judgment, and for a sale of said properties under the order of this Court, and an application of the proceeds thereof to the payment and satisfaction of the indebtedness herein sued for, and such other indebtedness as may be owing by said defendant. Plaintiff further prays for costs of suit, and for general relief.

BULLINGTON, BOONE, HUMPHREY & KING,
Attorneys for Plaintiff.

EXHIBIT "A."

Our Interest:

29/640 of the total production in three acres more or less out of the Northwest corner of the West 5 acres, out of the North 10 acres, out of the North 20 acres, out of the North 40 acres, Block #75, Red River Valley
1415 Lands, Wichita County, Texas, 50/520 of 6/16 or 30/832 of the total production in the East 10 acres of the South 20 acres of the Northwest 40 acres, out of Block #88, Red River Valley Lands, Wichita County, Texas.

3.

1/64 of 1/8 or 1/48 of the total production in All of Lots Nos. 13 and 14 of the Orchard Addition to the town of Burkburnett, Wichita County, Texas.

4.

1/64 of 1/8 or 1/512 of the total production in 640 acres more or less known as J. B. Evans Farm, Block #818, to-wit: 200 acres of T. E. & L. Co., Survey, and 200 acres of the Elizabeth Stanley Survey, and 200 acres more or less of Jucinda Meadors Survey, Wichita County, Texas.

5.

3/22 of 1/8 or 3/176 of the total production in A certain tract of land in and to block #1, Goodwin Addition, Townsite of Burkburnett, and by virtue of a certain pooling contract which includes Lots No. 19 and the East 1/2 of 20, Wichita County, Texas.

6.

1/11 of 1/8 or 1/88 of the total production in Lot No. 11, Block #1, Goodwin Addition, Townsite of Burkburnett, subject to a certain pooling contract dated August 7, 1918, Wichita County, Texas.

7.

5/12 of 1/8 or 5/96 of the total production in Lots Nos. 5-6-7-8-9, North 1/2 of Block #22, Townsite of 1416 Burkburnett, Wichita County, Texas.

8.

1/2 of 1/8 or 1/16 of the total production in Lots Nos. 11-12-13-14-17-18-19-20 of the H. E. McConnell subdivision of the East 200 acres of the E. Michna Land of the F. W. Huseman and A. A. Durfee Surveys, Block #819, Wichita County, Texas.

9.

1/12 of 7/16 or 7/192 of the total production in Two acre tract of land in the Musgrave Addition, Townsite of Burkburnett, described in Deed, Wichita County, Texas.

10.

3/64 overriding royalty in 40 acres of the South 100 acres of the Sarah Tankersley Survey, Abstract #278, known as Lot #4, Young County, Texas.

11.

1/10 of 3/8 or 3/80 of the total production in Lots Nos. 9 of the H. E. McConnell subdivision of the East 200 acres of the Michna Land in F. W. Huseman Survey, Block #819, Wichita County, Texas.

12.

1/10 of 3/8 or 3/80 of the total production in Lot No. 10 of the H. E. McConnell subdivision of the East 200 acres of the Michna Land in F. W. Huseman Survey, Block #819, Wichita County, Texas.

13-A.

25/520 of 3/8 or 15/832 of the total production in the East 10 acres of the South 20 acres of the North-
1417 west 40 acres out of Block #88, Red River Valley Lands Subdivision, Wichita County, Texas.

13-B.

7/256 of the total production in the West 2½ acres of the North 5 acres of that 10 acres out of the 60 acres off

the North end of the South 140 acres off the East 272 acres of Block #101 Red River Valley Lands, Wichita County, Texas.

13-C.

5/360 of 7/16 or 7/1152 of the total production in the South 5 acres of the West 12½ acres of the East 1/2 of the Southwest 1/4 of the Southwest 160 acres of Block #97, Red River Valley Lands, Wichita County, Texas.

13-D.

1/14 of 1/8 or 1/112 of the total production in Lot No. 19, College Heights Additions, Townsite of Burkburnett, subject to pooling agreement dated August 19, 1918, Wichita County, Texas.

14.

1/24 overriding royalty of the total production in 7 acres more or less in the South Central part of Block #97, Red River Valley Lands, Taylor Farm, E. Stanley Survey, Abstract #259, Wichita County, Texas.

15.

1/6 of 1/8 or 1/48 of the total production in Lot No. 3, Block #1, of the College Heights Additions to the town of Burkburnett, subject to pooling agreement, Wichita County, Texas.

1418

16.

1/16 of 1/8 or 1/128 of the total production in All of the South 80 acres of the J. A. Harkness Survey, Abstract #1442, Patent #112, Volume #9, known as A. L. Owens Farm, Young County, Texas.

17.

1/8 of 1/8 or 1/64 of the total production in All of the South 80 acres of the J. A. Harkness Survey, Abstract #1442, Patent #112, Volume #9, known as A. L. Owens Farm, Young County, Texas.

18.

1/8 of 1/8 or 1/64 of the total production in the West 40 acres of the South 80 acres of the G. L. Aynesworth Survey, B. R. I. R. No. 49, Abstract No. 1948, Patented to J. A. Driver, dated August 13, 1913, Patent No. 3, Volume No. 47, Young County, Texas.

19.

1/8 or 1/8 or 1/64 of the total production in the East 40 acres of the South 80 acres of the G. L. Aynesworth Survey, B. R. I. R. No. 49, Abstract No. 1948, Patented to J. A. Driver, dated August 13, 1913, Patent No. 3, Volume No. 47, Young County, Texas.

20.

5/8 of 1/8 overriding royalty or 5/64 of total in 40 acres of the South 100 acres of the Sarah Tankersley Survey, Abstract No. 278, known as Lot No. 4, Young County, Texas.

21.

1/16 of 1/8 or 1/128 of the total production in the Southwest 40 acres of the C. E. F. Auburg Survey, Abstract No. 1663, Patent No. 550, Volume No. 11, Patented to C. E. F. Auburg, Young County, Texas.

1419 22.

1/24 of 1/8 or 1/192 of the total production in the Northeast quarter (NE 1/4) of the Northeast quarter (NE 1/4) of Section 32, Township 1 South, Range 8 West, Stephens County, Okla.

23.

1/32 of 1/8 or 1/256 of the total production in All of R. D. Owens Survey, Abstract No. 2245, known as B. R. I. R. Survey No. 38, Patented October 29, 1919, by R. D. Owen, Young County, Texas.

24.

1/16 of 1/8 or 1/128 of the total production in All of the South 80 acres of the J. A. Harkness Survey, Abstract No. 1442, Patent No. 112, Volume No. 9, A. L. Owen Farm, Young County, Texas.

25.

1/4 of 1/8 or 1/32 of the total production in All of the R. D. Owens Survey, Abstract #2245, known as B. R. I. R. Survey No. 38, Patented October 29, 1919 by R. D. Owen, Young County, Texas.

26.

1/24 of 1/8 or 1/192 of the total production in the North 100 acres of the P. J. Humphries Survey, Abstract No. 153, J. W. Hughes Farm, Young County, Texas.

27.

1/48 of 1/8 or 1/384 of the total production in 84 acres more or less out of the W. A. Cannot Pre-Emption Sur-

vey, known as the McClure Farm, Eastland County, Texas.

1420 28.

11/12 of 1/32 of 1/8 or 11/3072 of the total production in the West 50 acres of the South 100 acres of the W. G. Watkins Survey, known as B. F. Eakin Farm, Eastland County, Texas.

29.

1/4 of 1/8 or 1/32 of the total production in the Southeast 50 x 660 feet, known as the J. E. Musick Land, Outer Block No. 20, of the City of Burkburnett, Wichita County, Texas.

30.

3/52 of 1/8 or 3/416 of the total production in a Fifty Acre tract, more or less, a part of the Pedro Varela XI League Grant, said Fifty acres being more particularly described as follows: Beginning at the Southwest Corner of Felix Dancy's tract at a stake in Thurmon's North line: Thence South 45 W 473 varas, with Thurmon's said line to a stake in same; Thence North 45 W 261 vrs. with Thurmon's line to stake in same; Thence North 45 W. 510 vrs. to a stake for corner in Geo. Harris' S. Line: Thence North 45 E 365 vrs with said Harris' S line to his S. E. Corner; Thence South 45 E 512 vrs. with King Dancy's W line to stake in same: Thence North 60 E 311 vrs. to stake in Felix Dancy's W. Line: Thence South 35 E 200 vrs. to the place of beginning, containing Fifty acres more or less, less 6 vrs. off the North end reserved for road, Limestone County, Texas.

1421 31.

1/2 of 1/8 or 1/16 of the total production in 8 1/2 acres out of Outer Block No. 24, of the Outer Blocks of the town

of Burkburnett, as described in Deed, Wichita County, Texas.

32.

1/10 of 1/8 or 1/80 of the total production in the West 1/2 of the Northwest 1/4 of Section 2, Township 15 North, Range 8 East, Creek County, Okla.

33.

1/10 of 1/8 or 1/80 of the total production in the West 1/2 of Northwest 1/4 of Southeast 1/4 Section 28, Township 16 North, Range 9 East, containing 20 acres more or less, known as the Julia Brunner Farm, Creek County, Oklahoma.

34.

1/48 of 1/8 or 1/384 of the total production in a certain tract of land out of the W. H. Smith Survey, conveyed by G. T. Jester and W. R. Bright to W. H. Lee on December 10, 1882, Volume No. 41, Page No. 415, Deed Records Navarro County, Texas, known as J. J. McGaw Farm.

35.

1/48 of 1/8 or 1/384 of the total production in a certain tract of land out of the W. H. Smith Survey, conveyed by G. T. Jester and W. R. Bright to W. H. Lee on December 10, 1882, Volume No. 41, Page No. 415, Deed Records Navarro County, Texas known as J. J. McGaw Farm.

36.

3/7 of 1/8 or 3/56 of the total production in the Northeast 1/4 of Southwest 1/4 of Section 23, Township 16

North, Range 9 East, known as the Bov Davis Farm, Creek County, Oklahoma.

37.

1/16 of 1/8 or 1/128 of the total production in the East one-half of the Southwest 1/4 of Section 29, Township 15 North, Range 10, East, containing 160 acres more or less, known as Mary McIntosh Farm, Creek County, Okla.

38.

3/216 of 1/8 or 3/1728 of the total production in the Northwest 1/4 of Section 15, Township 24, Range 1 West, known as the John W. Lee Farm, Noble County, Okla.

39.

1/16 of 1/8 or 1/128 of the total production in the West One-half of the Southwest 1/4 of Section 29, Township 15 North, Range 10, East, containing 160 acres more or less, known as Mary McIntosh Farm, Creek County, Okla.

40.

1/7 or 1/8 or 1/56 of the total production in Lot 7, Block 2, L & S Second Addition to the town of Burkburnett, known as the River Sand Lease, Wichita County, Texas.

41.

1/20 of 1/8 or 1/160 of the total production in the Southwest 1/4 of Southeast 1/4 of Section 29, Township 15 North, Range 10 East, containing 40 acres more or less, known as Minnie McIntosh Farm, Creek County, Okla.

1423

42.

1/16 of 1/8 or 1/128 of the total production in the Southwest 40 acres of the C. E. F. Auburg Survey, Abstract No. 1663, Patent No. 550, Volume No. 11, Patented to C. E. F. Auburg, Young County, Texas.

43.

1/48 of 1/8 or 1/384 of the total production in a certain tract of land out of the W. H. Smith Survey, conveyed by G. T. Jester and W. R. Bright to W. H. Lee on December 10, 1882, Volume No. 41, Page No. 415, Deed Records Navarro County, known as J. J. McGaw Farm, Navarro County, Texas.

44.

3/64 of 1/8 or 3/512 of the total production in the Southwest 1/4 of Southeast 1/4 of Section 10, Township 24 North, Range 1 West of the I. M. Known as the Joseph A. Novotny Farm, Noble County, Okla.

45.

1/16 of 7/8 or 7/128 of the total production in a tract of land Beginning at the NW corner of NW 1/4 of NE 1/4 of Section 32, Township 16 North, Range 9 East, thence running east along Section line 200 feet, thence South 140 feet, thence West 200 feet, thence North along section line to point of beginning, Creek County, Okla.

46.

3/216 of 1/8 or 3/1728 of the total production in Northwest 1/4 of Section 15, Township 24 North, Range 1 West, known as the John W. See Farm, Noble County, Okla.

1424 47.

1/8 of the total production, being an overriding royalty in the south 1/2 of the Southwest 1/4 of Section 34, Township 12, North, Range 12 East, known as the Ellis Holmes Farm, Okmulgee County, Okla.

48.

3/64 of 1/8 or 3/512 of the total production in the Northwest 1/4 of Southeast 1/4 of Section 10, Township 24 North, Range 1 West of the I. M. known as the Jpseph A. Novotny Farm, Noble County, Okla.

49.

3/64 of 1/8 or 3/512 of the total production in the Southwest 1/4 of Southeast 1/4 of section 10, Township 24 North, Range 1 West of the I. M. known as the Jpseph A. Novotny Farm, Noble County, Okla.

50.

3/64 of 1/8 or 3/512 of the total production in the Northwest 1/4 of Southeast 1/4 of Section 10, Township 24 North, Range 1 West of the I. M. known as the Joseph A. Novotny Farm, Noble County, Okla.

51.

1/32 of 1/8 or 1/256 of the total production in the Southwest 1/4 of Southeast 1/4 of Section 10, Township 24 North, Range 1 West of the I. M. known as the Joseph Novotny Farm, Noble County, Okla.

1425 52.

1/16 of 1/8 or 1/128 of the total production in the Northwest 1/4 of Southeast 1/4 of section 10, Township 24 North, Range 1 West of the I. M. known as the Joseph A. Novotny Farm, Noble County, Oklahoma.

53.

1/8 of 1/8 or 1/64 of the total production in the North 1/2 of the Southwest 1/4 of section 34, Township 12 North, Range 12 East, known as the Ellis Holmes Farm, Okmulgee County, Oklahoma.

54.

1/4 of 1/8 or 1/32 of the total production in the South 1/2 of the Southwest 1/4 of Section 34, Township 12 North, Range 12, East known as the Ellis Holmes Farm, Okmulgee County, Okla.

55.

1/8 of 1/8 or 1/64 of the total production in the North 1/2 of the Southwest 1/4 of Section 34, Township 12 North, Range 12 East, known as the Ellis Holmes Farm, Okmulgee County, Okla.

57.

3/16 of 1/8 or 3/128 of the total production in all of B. R. I. R. No. 39, J. E. Dowdle Survey Abstract No. 2215, Containing 160 acres, Young County, Texas.

58.

1/64 of 1/8 or 1/512 of the total production in West 1/2 of Northeast 1/4 of Section 34, Township 25 North, Range 1 West, of the I. M. Kay County, Okla.

1426

59.

3/640 of 1/8 or 3/5120 of the total production in the East 1/2 of Northeast 1/4 of Section 34, Township 25 North, Range 1 West, of the I. M. Kay County, Okla.

60.

1/320 of 1/8 or 1/2560 of the total production in the Northwest 1/4 of Section 34, Township 25 North, Range 1 West, of the I. M., Kay County, Okla.

61.

1/256 of 1/8 of 1/2048 of the total production in Lot Nos. 1 and 2 and the South 1/2 of Northeast 1/4 of Section e, Township 24, North Range 1 West, of the IM Noble County, Okla.

62.

9/40 of 1/8 or 9/320 of the total production in the North 1/2 of the Southwest 1/4 of Section 34, Township 12 North, Range 12 East, known as the Ellis Holmes Farm, Okmulgee. County, Okla.

63.

1/32 of 1/8 or 1/256 of the total production in the West 1/2 of 100 acre tract out of the Northeast corner of J. B. Barry Survey, Abstract 82, known as the W. A. Brown Farm, Navarro County, Texas.

64.

1/8 of the 1/8 Fee Royalty in the West 30 acres of the East 50 acres of the North 80 acres of Block 1598, Texas Immigration and Land Company Survey, L. M. Hayter Land, North 100 acres of South 240 acres of Block 1598, W. O. Hayter Land, Archer County, Texas.

1427

65.

1/16 of the 1/8 Fee Royalty in Block 46 of the Meade L. M. Pasture Subdivision of the D. G. Thomas Survey, Abstract 458, Archer County, Texas.

66.

1/16 of the 1/8 Fee Royalty in Block No. 9 of the Crawford Pasture Subdivision of the Isaac Holman Survey, Archer County, Texas.

67.

1/16 of the 1/8 Fee royalty in the N 40 acres of Block 21; S 32 acres of Block 21; S 60 acres of W 80 acres of Block 22; and E 60 of W 160 of Block 19, Anderson South Pasture Subdivision, Archer County, Texas; N 25 acres of E 50 of W 100 of Block 19.

68.

1/4 of the 1/8 Fee Royalty in the E 30 acres of a 71 acre tract of land out of the D Milligan Survey, conveyed to A. J. Mathis, by W. H. Clements and wife, H. J. Clements, on the 4th day of Dec. 1907, said deed being recorded in Vol. 43, Page 116, Deed Records of Callahan County, Texas.

69.

1/8 of the 1/8 Fee Royalty in E. Pankonin Sur. No. 1700 and L. Pankonin Sur. No. 1701, known as E 1/2 of Section 4 B. B. B. & C. R. R. Co. Survey, Cert. 692, Young and Archer Counties, Texas.

70.

1/4 of 1/8 overriding royalty in the South 40 acres of the North 60 acres of the West 1/2 of the Northeast 1/4 of Section 83, Block 14, H. & T. C. R. R. Co. Survey, Wilbarger County, Texas.

1428

71.

1/32 of the 1/8 Fee Royalty in All of the West one-half of the Southeast one Fourth of Section 43 in Block 24 H

& G N Ry. Co. Survey in said County, containing 80 acres of land more or less, Wheeler County, Texas.

72.

1/16 of the 1/8 Fee Royalty in all of the Northeast one-fourth of Section 47, Block 24, H & G N Ry. Co. Survey in Wheeler County, Texas.

73.

1/32 of the 1/8 Fee Royalty in all of the East one-half of Section No. 54, in Block 24, H & G N Ry. Co. Surveys, containing 320 acres more or less, Wheeler County, Texas.

74.

1/16 of the 1/8 fee royalty in All of the East one-half of Section No. 57 in Block 24, H & G N Ry. Co. Survey in Wheeler County, Texas, containing 320 acres of land more or less.

75.

1/16 of the 1/8 royalty in all of the North one-half of Section 45, Block 24 H & G N Ry. Co. Surveys, in Wheeler County. Texas.

76.

1/8 of the 1/8 royalty in the South half of section 61 Block 25, H & G N Ry. Co. surveys containing 320 acres of land, more or less, Gray County, Texas.

1429 77.

1/4 of the 1/8 royalty in the West half of the Southeast quarter and the Northeast quarter of the Southeast

quarter, of Section 59 in Block 25 H & G N Ry. Co. Surveys containing 120 acres of land more or less, Gray County, Texas.

78.

1/8 of the 1/8 royalty in the Northwest quarter of section 60, Block 25, H & G N Ry Co. Surveys, containing 160 acres more or less, Gray County, Texas.

79.

1/2 of the 1/8 royalty in the South half of the Northeast Quarter of Section 35, Township 19 North, Range 21 West, containing 80 acres, Ellis County, Oklahoma.

80.

1/16 of the 1/8 of the royalty in All of Section No. 54, as the same is shown by the W. D. Twitchell map of the Subdivisions of the Bravo Ranch lands, located in Hartley County, Texas, containing 640 acres more or less.

81.

1/4 of the 1/8 royalty in all of section 206, Block No. 3, Certificate No. 1/632 issued to the Texas and Pacific Railway Company, and containing 640 acres, Pecos County, Texas.

1430 The Witness:

It said it was dismissed July 9, 1930, I copied that off of the record.

Mr. Boone:

It is agreed that suit No. 24,201-C was dismissed on the docket on July 9, 1930.

The Witness:

We did close out the Stephens Royalty in Wilbarger County, but I would not be able to say that it was for the purpose of paying on this particular note and having the suit dismissed. The money I got on the Stephens Royalty I turned over to Mr. Harrell, and it is my memory that the suit was dismissed, that is, Mr. Harrell, in the City National Bank, and I think he credited it on the note they had sued on, involved in this present lawsuit. Check No. 930, we have the entry on the ledger that we placed that check, $2,889.08 to notes payable City National Bank, cut down to $22,000.00; that is the only note we had in the City National Bank. We had John Davenport at that time, Davenport and Crane were paid $500.00 on June 24, and Kilgore and Rogers were employed and paid $100.00 on June 25, but it says, for advice, whether it was continuous employment or what it was, I couldn't tell you. I think it was advice in connection with this lawsuit. Check No. 930, Plaintiff's Exhibit 143, being a check on the Wichita Royalty Company, signed by E. E. Scannell for trustee, that was in 1930, and I was trustee, it is payable to the City National Bank in the amount of $3,055.42, dated July 14. That check was paid and charged to our account, the voucher says, "Notes payable to payment on note and interest,"

1431 and then an ink notation was put on there and showed that it was principal, $2,889.08 and interest $166.34, making a total of $3,055.42. I will say that I did whatever I could and did the best I could with the money we had available, on liquidating that note as quickly as possible; I had consulted with Davenport and Crane in this matter. I had also given Kilgore and Rogers a check for $100.00 and consulted them. Mr. Davenport and Mr. Kilgore sat in on that, I am not sure, it was done at Mr. Humphrey's office, or something about, we had a meeting up there one morning. Mr. Humphrey can tell you more about it than I can from the legal aspect. Check No. 908 was paid to Texas Investment Company and our voucher

reads, "Interest on Marlborough notes." and then it says, "Notes receivable, Texas Investment Company of Wichita Falls." In this suit that was filed, in which I was served, we were also sued for the indebtedness due and owing the Texas Investment Company as shown by paragraph 8 of this petition. which says, "that the said defendant is also indebted, on other obligations as a maker and indorser, among which is an obligation of the Texas Investment Company for $23,500.00. Another obligation of the Texas Investment Company for $5,000.00. Another obligation, Texas Investment Company for $5,000.00." I do not know what the agreements were as to the dismissal of that suit, if there was any agreement, let me see the agreement, I don't remember what it was.

Check No. 971, dated December 27, 1930, is Kilgore and Rogers for $200.00, and indorsed by them.

1432 Check No. 980, dated March 14, 1931, is to Kilgore and Rogers in the amount of $200.00, and the voucher reads, "Legal services to apply relative suits, City National Bank versus Wichita Royalty Company." It was indorsed by them and paid. Check No. 990, dated April 15, 1931, made payable to Kilgore and Rogers, in the amount of $100.00 indorsed by Kilgore and Rogers, and says, "legal services, in re suit City National Bank versus Wichita Royalty Company." Paid 4-22-31. Check No. 1,000 dated May 20, 1931, made to Kilgore and Rogers, attorneys-at-law, amount $100.00 indorsed Kilgore Rogers and paid 5-21-31. The voucher shows "Legal expense to apply on payment of counsel relative to City National Bank, G. W. Peckham." Check No. 1,012, dated August 4, 1931, Rogers and Kilgore, $100.00, indorsed Kilgore and Rogers. Paid 8-7-31. All of that money was paid to Kilgore and Rogers prior to the time this suit was tried in the State District Court in Wichita County, Texas, in 1932. Check No. 1,030, Kilgore and Rogers, attorneys-at-law, dated February 16, 1932, in the amount of $148.71, legal services to apply expenses incurred, their itemized statement in connection with suit, City National

Bank, indorsed Kilgore and Rogers by Guy Rogers. Paid 2-17-32. Check No. 1,031, dated February 16, 1932, made payable to Kilgore and Rogers in the amount of $750.00 legal expenses to apply suit City National Bank indorsed Guy Rogers and paid on February 17, 1932. Check No. 1,035, dated December 5, 1932, payable to Guy Rogers in the amount of $50.00, legal ex-
1433 pense in connection with lawsuit, Kilgore and Rogers, traveling expenses, Fort Worth and Austin, Wichita Royalty Company versus City National Bank, indorsed by Guy Rogers, paid 12-5-33. Check No. 1,047, I think that is a little period in there of four or five checks, we do not have the actual return back from the bank. The voucher, Check No. 1,047, dated December 27, 1934, check payable to Guy Rogers in the amount of $223.26 and says, "Legal expense to apply to payment Judge Black at Austin." Check No. 1,049, dated May 29, 1936, Kilgore and Rogers $550.00, legal expense to apply expense Oklahoma, garnishment, etc., in regard to suit Wichita Royalty Company and City National Bank. Check No. 1,060, to Kilgore and Rogers in the amount of $750.00, the voucher, "To apply on expense of counsel in connection with settlement of City National Bank suit, clerical expense $450.00, traveling expense $100.00, printing, office expense $150.00, telegraph and telephone $35.00, postage $15.00, and the check is indorsed by Kilgore and Rogers and paid 6-23-36. Check No. 1,066, made payable to Guy Rogers, $25.00, dated September 15, 1936, the voucher says, "Traveling expenses in connection with Federal Court hearing in Dallas, September 12, before Judge Atwell." That check is indorsed by Guy Rogers and paid September 28, 1936. Check No. 1,071, dated December 7, 1936, made payable to Kilgore and Rogers, Attorneys-at-law, in the amount of $500.00, the voucher reads, "To apply on expense of taking testimony before Federal Court in Wichita Falls versus City National Bank, check deposited to
1434 Kilgore and Rogers and paid December 8, 1936. Journal entry No. 1, 1935, $115.48, legal

services, credit cash on hand, turned cashier's check over to Guy Rogers, in the amount of $115.48. Journal entry April 6, 1935, debit legal services Kilgore and Rogers, $354.09, credit cash on hand, that was April, 19—I don't remember the date now. It reads "full amount of runs collected during April turned over to Kilgore and Rogers to apply on legal services in connection with suit with City National Bank." That is during the time I was out of town and these checks were turned over to Mr. Rogers in that amount. They received the proceeds therefrom.

Mr. Rogers:

I received those personally, my notation shows that they were received June 1, 1935.

The Witness:

Journal entry April 8, 1935, $203.84, legal services Kilgore and Rogers; we gave Mr. Rogers a cashier's check in that amount. Journal entry No. 11, legal services Kilgore and Rogers, $158.16, cash on hand, and we gave Mr. Rogers a cashier's check in that amount. Journal entry No. 12, legal services Kilgore and Rogers, $148.25, paid from cash on hand, and we gave Mr. Rogers a cashier's check for that amount. Those last items were during 1935. Turning back to journal entry—back to 1932, journal entry No. 3, legal expense, $357.43, cash on hand $357.43, money turned over to Guy Rogers, Attorney, in payment of expenses in preparing to submit lawsuit to higher Court; I entered it December 31, 1932, and we paid Mr. Rogers Cashier's Check $126.91,
$126.11, and $104.41, which constitute the sum
1435 of $357.43. Our cash memo No. 2,458 recites
$540.20 to pay Kilgore and Rogers, by District Clerk Trust fund No. 796, refund of transcript fee, $86.50 to statement of facts, $453.70, which makes $540.20. That deposit was to our bank account—I mean the Wichita Royalty Company. We received $1,033.12 from the Humble Oil and Refining Company, from the Court,

May 26, 1936, we deposited—took it into our account May 29th, and the amount of that check from the Humble was $1,033.12, and we received from the Panhandle Oil and Refining Company, $18.60, a total of $1,051.72. That money was deposited to the Wichita Royalty Company account in the First National Bank. Then in June, 1936, we got $2,640.03, Panhandle Oil Company, drawn on the First National Bank of Fort Worth, $2,640.03, it went into the deposit of the Wichita Royalty Company, our memo 2460, and we got $220.53 from the Sinclair Prairie A total of $2,946.12. June 15, we got garnishment judgment and interest, R. L. Sanford, District Clerk. Trust fund No. 870, $491.10, deposited to the Wichita Royalty Company account. June 15, we got Texas Company's voucher F-101, in the amount of $72.37, which went to the deposit of Wichita Royalty Company and that is all I can distinguish. The $86.50 is refund of transcript fee, in the statement of facts, $453.70, which made up the total of $540.20.

In addition to these funds paid to Kilgore and Rogers, as well as John Davenport, we have a contract with Kilgore and Rogers. I will try and produce that
1436 contract. In addition thereto, we gave the deed of trust to all of these properties in Texas belonging to Wichita Royalty Company, as well as mortgage on the properties belonging to the Wichita Royalty Company in Oklahoma, and those properties were sold to Guy Rogers as trustee for $250.00, in August, 1934, as shown by the trustee deed heretofore introduced in evidence. I did not get that $250.00. I have never notified the stockholders that I had given this deed of trust on all of the property, and this mortgage. There has been no communication with the stockholders directly in regard to the sale for $250.00, no bulletin has been sent out. I don't recall when the last bulletin was sent out, I think it was after the case was reversed by the Supreme Court. I did not tell in those communications that I have given the attorneys half of all they could recover. I do not intend to keep the stockholders in

the dark. I will try and find the last date I sent out a letter to the stockholders, I think Defendant's Exhibit 34, January 15, 1934, is the last one. I have talked to a good many of them, I don't remember what I told them, I talked to them about the case, just the specific statements, I would not remember. I did not tell the stockholders I paid out $10,000.00 in attorneys fees, that I remember, nor in regard to a half interest being assigned to the attorneys. We talked over the case, and the ultimate outcome, and things of that kind. When they asked me questions, I would try to answer them
1437 the best I could and told them what I knew about it. As to what is covered by the Oklahoma mortgage, that is a legal matter, and I am not familiar with it, but, whatever is gotten out of this suit I intend to give a mortgage on that. Plaintiff's Exhibit 27 is the mortgage, and it says, such property either personal or real, whatsoever description and wheresoever situated, such properties as we had, or that we might own. I cannot tell you whether we own anything in this lawsuit or not, we are contending for it. I intended to give a mortgage on certain properties we have. I would not be able to tell you without referring to the record, whether there has been any transfer of stock by the stockholders or not, since this lawsuit was filed, I will get that for you. The $19.00 worth of portage on May 31, 1936 had accumulated over a long period of time it is a book entry, I will look that up for you.

Mr. Humphrey:

We offer in evidence all of the checks in two separate batches, as follows:

(Exhibits marked "Plaintiff's Exhibit 194 and 195")

Date	No.	Amount	Payee	Drawn On	Signed	Perforated	Teller	Indorsed
6-25-30	923	100.00	Guy Rogers	City Nat'l	E. E. S. for tr.	6-27-30	–	Guy Rogers
9-29-3–	952	600.00	Kilgore & Rogers	City Nat'l	E. S. S. tr.	9-30-30	7	Kilgore & Rogers
10-16-30	957	400.00	Kil. & Rog.	Security Nat'l	E. E. S. tr.	10-17-30	2	Kil. & Rog.
12-27-30	971	200.00	Kil. & Rog.	Security Nat'l	E. E. S. tr.	12-30-30	2	Kil. & Rog.
3-14-31	980	200.00	Kil. & Rog.	Security Nat'l	E. E. S. tr.	3-16-31	–	Kil. & Rog.
4-15-31	990	100.00	Kil. & Rog.	Security Nat'l	E. E. S. tr.	4-22-31	2	Kil. & Rog.
5-20-31	1000	100.00	Kil. & Rog.	City Nat'l	E. E. S. tr.	5-21-31	3	Kil. & Rog.
8- 4-31	1012	100.00	Kil. & Rog.	City Nat'l	E. E. S. for tr.	8- 7-31	5	Kil. & Rog.
2-16-32	1030	148.71	Kil. & Rog.	First Nat'l	E. E. S. tr.	2-17-32	–	Kil. & Rog.
2-16-32	1031	750.00	Guy Rogers	First Nat'l	E. E. S. tr.	2-17-32	–	Guy Rogers
12- 5-33	1035	50.00	Guy Rogers	First Nat'l	E. E. S. for tr.	12- 5-33	1	Guy Rogers
12- 9-33	1036	250.00	Chas. L. Black	First Nat'l	E. E. S. for tr.	12- 8-33	6	None
5-29-36	1048	500.00	Chas. L. Black	First Nat'l	E. E. S. tr.	5-29-36	6	None
5-28-36	1049	550.00	Kil. & Rog.	First Nat'l	E. E. S. tr.	5-28-36	6	None
5-31-36	1053	1,351.85	Chas. L. Black	First Nat'l	E. E. S. tr.	6- 6-36	6	None
5-31-36	1,060	750.00	Kil. & Rog.	First Nat'l	E. E. S. for tr.	6-23-36	6	Kil. & Rog.
9-15-36	1066	25.00	Guy Rogers	First Nat'l	E. E. S. tr.	9-28-36	8	Guy Rogers
12- 8-36	——	500.00	Rog. & Kil.	First Nat'l	E. E. S. tr.	12- 8-36	3	Dep. Kil. & Rog.
12-31-29	868	400.00	E. E. Scannell	City Nat'l	E. E. S. for tr.	1- 2-30	–	E. E. Scannell
1-31-30	883	200.00	E. E. Scannell	City Nat'l	E. E. S. for tr.	2- 6-30	–	E. E. Scannell
2-15-30	889	200.00	E. E. Scannell	City Nat'l	E. E. S. for tr.	2-18-30	–	E. E. Scannell

2-28-30	892	200.00	E. E. Scannell	City Nat'l	E. E. S. for tr.	3- 2-30	–	E. E. Scannell
3-15-30	896	200.00	E. E. Scannell	City Nat'l	E. E. S. for tr.	3-22-30	–	E. E. Scannell
5-31-30	897	200.00	E. E. Scannell	City Nat'l	E. E. S. for tr.	4- 5-30	–	E. E. Scannell
4-15-30	903	200.00	E. E. Scannell	City Nat'l	E. E. S. for tr.	4-16-30	–	E. E. Scannell
4-30-30	905	200.00	E. E. Scannell	City Nat'l	E. E. S. for tr.	5- 1-30	–	E. E. Scannell
5-16-30	909	200.00	E. E. Scannell	City Nat'l	E. E. S. for tr.	5-17-30	–	E. E. Scannell
5-31-30	912	200.00	E. E. Scannell	City Nat'l	E. E. S. for tr.	6- 5-30	–	E. E. Scannell
6-13-30	917	180.00	E. E. Scannell	City Nat'l	E. E. S. for tr.	6-13-30	–	E. E. Scannell
6-13-30	918	200.00	E. E. Scannell	City Nat'l	E. E. S. for tr.	6-13-30	–	E. E. Scannell
6-25-30	922	200.00	E. E. Scannell	City Nat'l	E. E. S. for tr.	6-28-30	–	E. E. Scannell
7-16-30	931	200.00	E. E. Scannell	City Nat'l	E. E. S. for tr.	8- 1-30	–	E. E. Scannell
7-31-30	936	200.00	E. E. Scannell	Security Nat'l	E. E. S. for tr.	8- 7-30	–	E. E. Scannell
8-15-30	939	200.00	E. E. Scannell	City Nat'l	E. E. S. for tr.	8-27-30	2	E. E. Scannell
								H. A. Richardson
8-30-30	940	200.00	E. E. Scannell	City Nat'l	E. E. S. for tr.	9- 3-30	2	E. E. Scannell
9-18-30	949	200.00	E. E. Scannell	Security Nat'l	E. E. S. for tr.	9-23-20	3	E. E. Scannell
9-29-30	953	400.00	E. E. Scannell	Security Nat'l	E. E. S. tr.	9-30-30	4	E. E. Scannell
10-16-30	958	200.00	E. E. Scannell	Security Nat'l	E. E. S. for tr.	10-18-30	–	E. E. Scannell
(Pencil Notation: Mr. Scannell says this should be drawn on 88-1899) NSF.								
11-14-30	963	200.00	E. E. Scannell	Security	E. E. S. for tr.	11-14-30	1	E. E. Scannell
(Indorsement canceled) NSF 88-130.								
12- 1-30	968	200.00	E. E. Scannell	Security	E. E. S. for tr.	12- 6-30	2	E. E. Scannell
12-15-30	969	200.00	E. E. Scannell	Security	E. E. S. for tr.	12-19-30	–	E. E. Scannell

Date	No.	Amount	Payee	Drawn On	Signed	Perforated	Teller	Indorsed
12-30-30	973	200.00	E. E. Scannell	Security	E. E. S. for tr.	12-31-30	2	E. E. Scannell
1- 9-30	—	145.00	E. E. Scannell	Security	E. E. S. for tr.	1- 8-31	4	E. E. Scannell
1-14-31	978	255.00	E. E. Scannell	Security	E. E. S. for tr.	—	3	E. E. Scannell
			(Void)					
3-24-31	983	100.00	E. E. Scannell	Security	E. E. S. for tr.	3-24-31	–	E. E. Scannell
4- 1-31	986	150.00	E. E. Scannell	Security	E. E. S. for tr.	4- 2-31	3	E. E. Scannell
4-15-31	992	200.00	E. E. Scannell	Security	E. E. S. for tr.	4-18-31	3	E. E. Scannell
4-29-31	994	100.00	E. E. Scannell	Security	E. E. S. tr.	4-29-31	1	E. E. Scannell
5-20-31	999	200.00	E. E. Scannell	City Nat'l	E. E. S. tr.	5-20-31	4	E. E. Scannell
6-12-31	1005	140.00	E. E. Scannell	City Nat'l	E. E. S. for tr.	5-13-31	6	None
7- 2-31	1006	60.00	E. E. Scannell	City Nat'l	E. E. S. for tr.	7- 2-31	–	E. E. Scannell
7- 1-31	1008	200.00	E. E. Scannell	City Nat'l	E. E. S. for tr.	7- 8-31	3	E. E. Scannell
7-31-31	1013	200.00	E. E. Scannell	City Nat'l	E. E. S. for tr.	8- 7-31	–	E. E. Scannell
8-31-31	1016	200.00	E. E. Scannell	City Nat'l	E. E. S. tr.	9- 2-31	4	E. E. Scannell
10- 1-31	1018	200.00	E. E. Scannell	First Nat'l	E. E. S. for tr.	1- 1-31	–	E. E. Scannell
10- 7-31	1020	3.35	E. E. Scannell	City Nat'l	E. E. S. for tr.	10- 8-31	2	E. E. Scannell
10-29-31	1023	200.00	E. E. Scannell	First Nat'l	E. E. S. for tr.	10-29-31	3	E. E. Scannell
12- 1-31	1026	200.00	E. E. Scannell	First Nat'l	E. E. S. for tr.	12- 5-31	3	E. E. Scannell
1- 1-32	1027	225.00	Cashiers Check	First Nat'l	E. E. S. for tr.	1- 8-32	6	None
2- 2-32	1028	400.00	E. E. Scannell	First Nat'l	E. E. S. for tr.	2- 3-32	3	E. E. Scannell
2-25-32	1032	95.00	E. E. Scannell	First Nat'l	E. E. S. for tr.	2-25-32	3	E. E. Scannell
2-23-34	1042	150.00	E. E. Scannell	First Nat'l	E. E. S. for tr.	2-23-34	–	E. E. Scannell

5-29-36	1050	541.92	E. E. Scannell	First Nat'l	E. E. S. for tr.	5-28-36	6	None
5-29-36	1051	2,860.56	E. E. Scannell	First Nat'l	E. E. S. tr.	—	–	None
			(Canceled)					
5-29-36	——	2,860.56	E. E. Scannell	First Nat'l	E. E. S. tr.	5-29-36		
(Notation: To be held for a later accounting and distribution).								
5-31-36	1052	28.90	E. E. Scannell	First Nat'l	E. E. S. tr.	6- 5-36	–	E. E. Scannell
6- 6-36	1054	1,508.71	E. E. Scannell	First Nat'l	E. E. S. tr.	None		None
			(Canceled)					
6- 6-36	No...	1,508.71	Cashier ck.	First Nat'l	E. E. S. tr.	6- 6-36	6	None
4-14-34	1054	256.94	E. E. Scannell	First Nat'l	E. E. S. for tr.	4-14-34	4	E. E. Scannell
5-31-36	1055	563.47	E. E. Scannell	First Nat'l	E. E. S. tr.	6-15-36	–	None
			(Cash. ck.)					
6-30-36	1061	69.55	E. E. Scannell	First Nat'l	E. E. S. for tr.	7- 2-36	3	E. E. Scannell
7- 5-36	1064	50.00	E. E. Scannell	First Nat'l	E. E. S. for tr.	7- 6-36	3	E. E. Scannell
(Stamped Western Union Telegraph Co. by Fred Hyer, Cashier)								
6- 6-34	1055	273.56	E. E. Scannell	First Nat'l	E. E. S. for tr.	6- 7-34	3	E. E. Scannell (Cancelled)
1- 5-37	1072	109.81	E. E. Scannell	First Nat'l	E. E. S. tr.	1- 4-37	6	None

1442 The Witness:

The journal of the Wichita Royalty Company for 1936, speaks the truth, on March 31, 1936, I wrote in there, "Notes receivable $2,000.00." As I recall that, that is an item carried forward from the previous year of $1,-500.00 and $500.00 check, money that went to the Texas Investment Company of Wichita Falls. We paid it in there, I think, as I remember it, everybody put some money into the Texas Investment Company down there to take care of expense. I haven't changed the books since it was originally set up, just carried along over previous years. We are suing the bank for the identical items, I think that comes out of the Texas Investment Company end of it. I don't know whether we were still claiming the stock of the Texas Investment Company on May 31, 1936 or not, that was just carried forward from year to year. That is in my handwriting. Until something is done finally and ultimately, in some way, I don't know what else to do with it. I wish you would ask the auditors to explain that, until some change is made, I have just carried it forward from year to year. I am the bookkeeper, and I am the trustee, and I wrote that. As I told you before, I have made no adjustment on our records as to the properties, that were tendered back, etc., just carried them forward from year to year. and when it is finally washed up we will have an audit made and the adjustment will be made on the books to show how it should be—that is the best I can explain it. I don't think we have ever had a complete audit made. Voucher No. 1021, October 13, 1931, reads, "To recovery of money due Wichita Royalty Company on Harvester lease, in the L. A. Wilkins Howard from June, 1921 to June, 1931, to W. W. Johnson." He is from Dallas and that is his business. He might be an auditor. His business is checking up oil company books.

1443 In order to explain that a little bit, for instance, like the Magnolia Company, he or someone gets information on their records as to oil in suspense, that you do not know about and he collects the oil for you.

I don't know how I have it down there, whether I have it as an audit or not, May 31, 1931. I did employ Mr. Sheppard sometime this past summer, his firm has always looked after our matters, helped us with our tax returns. He never made an audit for me, to my knowledge, either before I was trustee or afterwards. I have the voucher on check No. 1,181, January 2, 1923, and it shows, "Sheppard-Crouch Company, $120.00, for supervising and audit work months of November and December, 1922." Check No. 45, August 13, 1923, Sheppard-Crouch Company, $360.00, audit service up to and including May 31, 1923, that was not for audits, that was for helping us supervise the carrying on of the business, that was with reference to questions that came up as to how the entries should be made. Check No. 264, September 5, 1924, Sheppard-Crouch Company, $105.00, audit and tax service August 1, 1924, that was for helping us with our tax returns and advising with reference to entries, etc., and not for an audit. Check No. 396, 1925, July 21, to Sheppard-Crouch Company, to preparing tax return for fiscal year ending May 31, 1925, $60.00. Check No. 475, Dated February 20, 1926, Sheppard-Crouch Company, $85.00, voucher reads, "Accounting service August 15, 1925, to date, $85.00." George Peckham was not keeping an audit of his books during
that time, those amounts were not forwarded,
1444 they were for tax work. The tax return, as I recall it, was to go out in August. We were always advising with them and letting them show us certain things that should be handled in a certain way. Every few days we were going to the auditors and asking them questions about how to handle certain entries. George Peckham wanted to keep it straight and I was trying to keep it straght, too. I guess George Peckham was keeping a check on me. Check No. 522, Sheppard-Crouch Company, $12.50, the voucher reads, "accounting service to date." That was probably some little item, the check was issued July 7, 1926. Check No. 698, March 19, 1928, Sheppard-Crouch Company, $550.00,

that was audit valuation services in payment of services for preparing income tax report for fiscal year ending May 31, 1927. Check No. 744, dated August 10, 1928, Sheppard-Crouch Company, $25.00, accountants Services and supervision and review income tax return for fiscal year ending May 31, 1928. Check No. 834, dated August 10, 1929, to Sheppard-Crouch Company, $25.00, for services rendered to date. George Peckham told me to keep these books, and I advised with Sheppard-Crouch Company.

The first check paid out for auditing or advice is dated May 31, 1936, No. 1,059, I hired him about that time to work on this lawsuit, and give me whatever advice I needed in regard to this, that is, Mr. Sheppard. Mr. Crouch had always handled our work, or the major portion of it, then he left and Mr. Sheppard has advised with me when I needed anything since that time. It
1445 was 1936 when we started working on this lawsuit, this accounting. Mr. Crouch is a Certified Public Accountant and Mr. Sheppard is a master of business administration from Harvard University, much better than a Certified Public Account in classification, as I understand it. On May 31, 1936, we paid him $750.00, the voucher shows, "To apply on audit, Wichita Royalty Company's books, $500.00, to apply on traveling expenses in connection with looking after the company's lawsuit, City National Bank, $250.00, total of $750.00." Check No. 1,067, September 15, 1936, to G. L. Sheppard for $35.00, traveling expense in connection with Federal Court Hearing, Dallas, September 12, before Judge Atwell. Check No. 1,068, October 27, 1926, to G. L. Sheppard, $500.00, to advice on auditing expenses in connection with City National Bank suit against Wichita Royalty Company. Check No. 1,070, dated December 7, 1936, G. L. Sheppard, $300.00, to apply on expense audit Wichita Royalty Company, City National Bank suit. Between May 31, and December 7, 1936, I paid G. L. Sheppard $1,585.00. Another item $500.00, says, "Audits and income tax," I will have to

look into that. In addition to the lawyers' fees, etc., I have paid Mr. Sheppard whatever the record shows. It is problematical as to what the stockholders of the Wichita Royalty Company are going to get, but they are going to get every cent that it is possible to give them when the lawsuit is settled. As it is now, Mr. Harrell and Mr. Bill Peckham are trying to grab it all.

I think I testified on the trial of this case before that I had a contract with the lawyers, as follows: "Q. In that contract it is provided that you were to give them a contingent fee of one-half?"

1446

"A. Yes, sir, I made the contract and notified my stockholders of the situation, wrote them a letter telling them what it was." I don't know exactly what that is referring to on the other trial, that might have been what I told them in regard to the lawsuit, and not in regard to the contract. It is true that I made a contract with my lawyers, and I will get the contract for you. The intention of the contract is to see that Mr. Rogers was paid for his services in connection with the Wichita Royalty Company.

Here is the account of the Wichita Royalty Company, November 7, 1929, at the time of George Peckham's death, which shows that the Wichita Royalty Company had on deposit in the City National Bank, $1,022.84. November 1, shows a balance of $1,022.84 it shows the balance changed on November 8, 1929 to $1,002.92. This is the record of the statements as received from the City National Bank month by month, they are bound consecutively, the beginning entry is February 28, 1923. On June 1, 1932, we had $85.83 in the City National Bank, and $64.00 in the First National Bank. When the checks were returned from the bank, the vouchers and the checks were kept in the office of the Wichita Royalty Company. I could not say that I personally inspected each check as they were returned, but they came under my supervision and have been under my supervision since January, 1923. I could not say that every voucher was made under my super-

1447

vision, perhaps I was not there sometimes. I could have seen it when I returned, I have been in and out of the office all the time. Each transaction of property and the receipts, as well as the payments therefor, were reflected on our books, vouchers and checks, who the check were payable to and the checks showed the indorsement on them. There might have been some time when the checks were not returned every thirty days, but we have most every one of the checks here. I think if any stockholder had come in and approached Mr. Peckham or me, they could have inspected the books, after I became trustee if they had wanted to see the records, I would have been glad to show them what I could. As far as I know, the notices sent out to the stockholders reflected the truth. I have sent out two or three since I became trustee.

I made an income tax report for the company after George went in, as well as since I became trustee, I will be glad to get those for you. Those income tax reports speak the truth. The income tax reports were never questioned by the government. I swore to them.

I have not found journal entries Nos. 18, 26, 27, 28, and 29, I will continue to hunt for them.

I cannot get the income tax report for 1936 right now, I will have to get those out of the files.

1448 I knew that all banks were in bad condition in 1933, when they were closed. The crash in the stockmarket was in 1929. I knew of the reorganization of the City National Bank here in March, 1933, I knew when the new bank was opened, of course, I didn't know any of the inside matters.

Cross Examination.

By Mr. Morrow:

I will produce the reports that were furnished to the stockholders, I think there are several others besides the one dated February, 1931 and the one dated January, 1934. I wrote the report sent out February 2, 1931, whether the stockholders received the reports, I do not know.

I never received any report from any stockholder protesting the fact that we had instituted this suit against the City National Bank, that I know of. So far as I know, no stockholder has objected to the fact that I was handling everything, all I did hear from told me to go ahead and exercise my own judgment, I heard from quite a few. I think on a few occasions stockholders came here during George Peckham's lifetime. They seemed to be satisfied, I cannot remember that any of them raised any controversy, I remember one woman came down here. George Peckham, like any other employer, expected his employees to keep his books secret from the public generally.

Voucher No. 478, March 6, 1926, shows the voucher notation is written in original typewriting, the checks are in carbon and the information is written in original typewriting; that is also true of check No. 479, drawn March 6, 1926, for $6,000.00. Those voucher
1449 notations were put in there some time later, just how long I could not tell you.

Journal Entry February 28, 1926, No. 24, deals with royalty income, estimated for the month of February, at the end of the month I would set up the journal entry, of estimated income, before we knew what it actually was. Journal entry No. 25, the next one, is the reverse of journal entry No. 24. Then the next entry, No. 26, dated March 31, 1926, accounts receivable, oil runs estimated royalty income, to set up oil runs estimated to March 31, 1926, for which checks have not been received to this date, $6,590.45. That was the last entry made in the journal for the month of March, 1926. The next journal entry is No. 27, which sets up in our journal for the first time the notation to the effect that we had acquired what is known as the Marlborough property; that is the same date, in substance, that is on these vouchers, Nos. 478 and 479 in original typing, and I think it was about March 31, that those entries on those vouchers were made, however, I couldn't say when it was, that was written by my associate bookkeeper and I cannot tell you just the date. In the ordinary

course of business, if I had had the notation before the end of the month I would have put it in there—the original vouchers were blank.

1450 J. T. HARRELL, recalled for further direct examination by Mr. Boone, testified as follows:

I have been on the stand before in this case. I remember the Stephens Royalty transaction in Wilbarger County, Texas. I will detail the transaction pertaining to what is commonly referred to in the suit as the Stephens Royalty and the Curlee Royalty; sometime about the 18th of January, 1924, W. A. Stephens and others, conveyed to Daniel Bond of Vernon, Texas, an oil and gas leasehold estate of 7/8 of the minerals for a consideration of $6,000.00 recited in the instrument, which instrument was filed for record January 31, 1934, in the deed records of Wilbarger County, as per copy thereof; this leasehold estate consisted of the north sixty acres of the west half of the northeast quarter of section 83, block 14, of the H. & T. C. Railway Company Survey, in Wilbarger County, Texas. In the purchase of this property it was the agreement and understanding that same was being purchased for the use and benefit of Daniel Bond, one-half interest; C. E. Basham one-fourth and J. T. Harrell one-fourth. In the consummation of this deal J. T. Harrell gave his check in payment of his one-fourth interest on or prior to February 2, 1924. The check has been lost, but the City National Bank of Wichita Falls paid this check as shown by ledger sheet of J. T. Harrell on February 2, 1924, to which reference is made. That bank account is in evidence. As

1451 to the purchase of this lease, same remained in the name of Daniel Bond, Vernon, Texas, as a matter of convenience to the three parties, and thereafter on or about the first of October, 1924, Daniel Bond conveyed a 6/8th leasehold estate reserving to himself and his co-owners, a one-eighth overriding royalty on the south twenty acres of said tract of sixty acres. The

consideration therefor recited in the instrument is $1.00 and other good and valuable consideration, and was dated the first of October, 1924, filed for record October 30, 1924. In truth and in fact the consideration for this assignment, or a six-eighth leasehold estate to J. R. Staley and J. C. Wynne was $6,000.00. Thereafter, on or about the 8th of October, 1924, Daniel Bond conveyed to F. C. Carter, Fred Carter, and I. A. Fine, the middle twenty acres of said sixty acre tract, which instrument being dated the 8th of October, 1924, was filed for record on October 15, 1924; the instrument reciting the consideration to be $1.00 and other good and valuable consideration, but in fact and in truth the same was $10,000.00. Both of these instruments heretofore recited reserved to Daniel Bond and his joint owners, one-eighth of the overriding royalty and a 6/8th working interest sold between the first and the eighth of October, 1924, for $16,000.00. Thereafter on the 27th of October, 1924, Daniel Bond conveyed the north twenty acres of the above described sixty acres to J. T. Barkley and W. R. Meados, reserving a one-fourth overriding royalty; thereby conveying only to J. T. Barkley and W. R. Meadows five-eighths leasehold estate. The consideration recited in the instrument dated
1452 the 27th of October, 1924, and filed for record October 27, 1924, was $10,000.00 and other valuable considerations, but in fact and in truth it was $20,000.00 for 5/8ths working interest. There was received therefor these assignment for these working interests, reserving to Daniel Bond and his co-owners, the overriding royalty above referred to, the 1/8 overriding royalty on the south forty acres, and one-fourth on the north twenty acres, the total sum of $36,000.00. There is an expense attached to the sale of these assignments as follows, abstracting expense $71.00, attorneys fees $32.50, making a total of $103.50 netting to Daniel Bond and J. T. Harrell and C. E. Basham from the sale of these working interests, with a reserved overriding royalties, $35,896.50, which was divided as follows: Daniel Bond, fifty percent, $17,948.25, C. E. Basham, Twenty-five percent, $8,974.12, J.

T. Harrell twenty-five percent $8,974.15. I have the deposit slip where that was divided. The amount coming to J. T. Harrell was deposited to his credit in the City National Bank on October 29, 1924, two days following the completion of the last sale to Barkley and Meadows. A like deposit to C. E. Basham was made on the same date, the credit to Daniel Bond is not shown. The original deposit slip has been shown to counsel for the Wichita Royalty Company. Daniel Bond lived in Vernon, kept his bank account in the Waggoner National Bank of Vernon.

Thereafter, on November 7, 1925, Daniel Bond executed to J. T. Harrell an undivided one-fourth interest
1453 in the 1/8th royalty on the south forty acres of said sixty acre tract, as shown by certified copy of the assignment filed for record November 14, 1925. On the similar date, Daniel Bond executed a similar assignment to J. T. Harrell for one-fourth interest in the one-fourth overriding royalty on the north twenty acres of said above described sixty acres, which assignment was filed for record November 14, 1925.

Similar assignments of similar dates and same proportions were made to C. E. Basham.

The title to J. T. Harrell and C. E. Basham's interest from the time of its acquisition in January, 1924, until November, 1925 remained in the name of Daniel Bond for convenience, but sometime prior to the 7th of November, 1925 negotiations were started between J. T. Harrell and C. E. Basham, with G. W. Peckham for the sale of part of their interest in the above described royalty and resulted in the first sale.

About November 7, 1925, J. T. Harrell and C. E. Basham, having their interests in their names, in the royalties above described, conveyed on November 9, 1925, to G. W. Peckham, one-half of their royalty in the above described sixty acres for the consideration of $30,000, paid as follows—$15,000.00, paid November 12, 1935, as shown by the deposit ticket of J. T. Harrell in the City National Bank of Wichita Falls, Texas, as well as the ledger sheet of J. T. Harrell; one-half thereof going to J. T. Harrell

and one-half to C. E. Basham. The remainder of
1454 $15,000.00 was evidenced by three notes totaling $15,000.00, which notes were paid by G. W. Peckham on the following dates—November 15, 1925, $5,023.00; November 27, 1925, $5,026.00; February 2, 1936 $5,100.00. This total amount was divided equally between C. E. Basham and J. T. Harrell and deposited to the credit of the same parties, in the City National Bank and shown by the deposit slips on the respective dates and the ledger account of J. T. Harrell on those dates. The amount constituted principal and interest on the three notes of $5,000.00 each. The deposit slips for each of those have been introduced in evidence.

Q. Now, then, there was a second sale to G. W. Peckham?

A. There was.

Q. I do not mean to G. W. Peckham, the Wichita Royalty Company?

A. Yes, sir. Just prior to the first of January, 1926, in December, 1926, J. T. Harrell and G. W. Peckham had negotiated for the purchase from W. S. Curlee a tract of land known as the "W. S. Curlee land" of forty acres, immediately adjacent to the Sibley-Taylor Addition to the City of Wichita Falls, southeast of the original townsite of the City of Wichita Falls, agreeing to pay W. S. Curlee for the said forty acre tract of land in [redacted] the sum of $5,135.50 in cash, and the assumption of $2,814.00 in notes. This deal was consummated January 8, 1926, W. S. Curlee conveying to J. T. Harrell and G. W. Peckham the said forty acres of land in Wichita County, Texas. The deed is recorded in volume 243, page 577 of the Deed records of Wichita County, Defendant's Exhibit 14, in this record.

I do not think we had a written contract, I am detailing
the actual consideration. The deed recites the
1455 consideration to be $4,814.00 and the assumption of two notes of $1,000.00 each and his note

for $814.00. The grantee agreed to pay the taxes for the year 1926, however, there was an additional expense in the acquisition of this property which was paid by J. T. Harrell and G. W. Peckham in addition to the cash consideration recited in the deed, of $4,814.00, of $321.50. My best recollection is that there was the taxes on the property which J. T. Harrell and G. W. Peckham purchased, and other expenses paid by J. T. Harrell and G. W. Peckham. The ledger sheet of J. T. Harrell shows that on January 9, 1926, there was a debit of $2,567.75 on the account of J. T. Harrell in the City National Bank, which was the payment for J. T. Harrell's undivided one-half interest in the Curlee property. I cannot find that check. The records do reflect a similar check for a similar amount of G. W. Peckham's.

Mr. Boone:
We offer the check in evidence.

DEFENDANT'S EXHIBIT 154.

Wichita Falls, Texas Jany 8, 1926, 88-130 11. The City National Bank of Wichita Falls "19" "2", Pay to the order of Curlee Land $2567.75 (Perforated) Paid 1-11-26 (Signed) G. W. Peckham No indorsements.

The Witness:
There was deposited to the credit of W. S. Curlee on January 9, 1926, the sum of $4,749.10, made up by the checks of J. T. Harrell and G. W. Peckham. The consideration as shown by the deposit slip of W. S.
1456 Curlee was $4,749.10, and the check of J. T. Harrell for one-half interest was $2,567.75, and a check of G. W. Peckham of like amount of January 8, $2,567.75, making a total of $5,135.50. Evidently there was some expense attached to the clearing of this title, which took up the difference what Harrell and Peckham

paid for it, in the sum of $386.40, a matter of back taxes and other expense.

The Curlee tract then being in the name of J. T. Harrell and G. W. Peckham, some time during these negotiations G. W. Peckham negotiated for the purchase from J. T. Harrell and C. E. Basham of the balance of their royalty in the sixty acres known as the Stephens Royalty.

Q. At that time, did he negotiate that for the Wichita Royalty Company, that second sale, was that to the Wichita Royalty Company?

A. Yes, sir.

Q. The second purchase, then, was for the Wichita Royalty Company?

A. Yes, sir. On January 1, 1926, J. T. Harrell and C. E. Basham agreed to sell G. W. Peckham the remaining half of their royalty in the Stephens sixty acres of land in Wilbarger County, Texas, for $25,769.07. I do not think that agreement was in writing. Consideration as follows: $2,201.32 paid on January 15, 1926, going to the credit of J. T. Harrell and C. E. Basham, one-half each, as shown by the ledger sheet of J. T. Harrell of date January 16, 1926, of $1,100.66; and one the 23rd of January, 1926, G. W. Peckham conveyed his one-half interest to J. T. Harrell in the Curlee forty acre tract of land as shown by certified copies of the deed hereto referred to. This interest of G. W. Peckham in the Curlee tract of land was taken in by J. T. Harrell and C. E. Basham for $1,000.00 above the amount of what G. W. Peckham had paid for said half interest, to $3,567.75.

1457 The balance of the consideration of $20,000.00 was evidenced by notes, three in number; the first one for $10,000.00 was paid January 25, 1926, in the amount of $10,028.00, the second one being a five thousand dollar note, was paid March 6, 1926, for $5,060.00; the third one being a note for $5,000.00, was paid March 31, 1926, totaling $5,085.00; making a total payment of the notes, $20,000.00 plus interest of $175.00. These payments were credited to the account, one-half to J. T. Har-

rell and one-half to C. E. Basham as shown by the deposit slip and ledger sheets of the City National Bank on the respective dates of said payments. The payment of these were evidenced by personal checks of G. W. Peckham, dated January 15, 1926, payable to J. T. Harrell and C. E. Basham for $2,201.32, marked on same, "For Vernon property," but in fact meaning the second purchase of the Stephens Royalty and was made and charged to the account of G. W. Peckham in the City National Bank on January 16, 1926, after having been indorsed by J. T. Harrell and C. E. Basham.

The first check, dated January 16, 1926, is Plaintiff's Exhibit 71. Up to that time I did not know who the real purchaser was of this second deal, I thought George Peckham was buying the property. At that time I accepted the note from George Peckham. Thereafter there was a deed executed or requested for me to be executed on this property. Defendant's Exhibit 8 is the deed, dated January 1, 1926, acknowledged January 28, 1926. At the time he gave me this first check, he likewise gave
1458 me the note, signed by G. W. Peckham. I do not have the notes, they were delivered to Mr. Peckham. They were paid off by the second or third payment. I first learned that this property was to be conveyed to him, or was being purchased for the Wichita Royalty Company at the time of the execution of the deed, January 28. I remember distinctly taking the notes of G. W. Peckham for the property.

The second check in payment of this second purchase, was a personal check of G. W. Peckham dated January 25, 1926, payable to J. T. Harrell and C. E. Basham for $10,028.00 and paid by the City National Bank of Wichita Falls on January 25, 1926, after having been indorsed by J. T. Harrell and C. E. Basham. The third check on this purchase was dated March 6, 1926, being the personal check of G. W. Peckham, payable to J. T. Harrell and C. E. Basham for $5,060.00, and paid out of the personal account of G. W. Peckham on March 6, 1925, after having been indorsed by J. T. Harrell and C. E. Basham. The

fourth check on this second purchase was dated March 31, 1926, being the personal check of G. W. Peckham payable to J. T. Harrell and C. E. Basham for $5,087.00. Paid by the City National Bank of Wichita Falls on April 1, 1926, after having been indorsed by J. T. Harrell and C. E. Basham, evidently in writing the check there was an error, J. T. Harrell and G. W. Peckham, but which was allowed to go to the credit of J. T. Harrell and C. E. Basham. This constituted the entire purchase price of the Peckham deal on the Stephens Royalty.

1459 Some time after that the negotiations started for the purchase by G. W. Peckham of the balance of the royalty owned by J. T. Harrell and C. E. Basham, out of what is known as the Stephens land in Wilbarger County, Texas, G. W. Peckham came to J. T. Harrell and C. E. Basham and requested them to make a deed to this property, not to him directly, but to the Wichita Royalty Company, which J. T. Harrell and C. E. Basham did. The deed from C. E. Basham to the Wichita Royalty Company, a certified copy being referred to on the second deal, was dated January 1, 1926, and had thereon revenue stamps in the sum of $26.00, showing that the consideration therefor was in excess of $25,000.00. This deed, however, was not acknowledged by J. T. Harrell, and C. E. Basham, until the 28th of January, 1926, and after the execution for filing and record by J. T. Harrell and C. E. Basham, G. W. Peckham's interest in the Curlee tract of land, after the first payment of $2,201.32 paid by G. W. Peckham on January 15, 1926, and after the second payment or the taking up of the first note of $10,000.00 by the payment to J. T. Harrell and C. E. Basham on January 5, 1926, of $10,028.00, this deed from J. T. Harrell and C. E. Basham evidently conveying the royalty interest as of January 1, 1926, to take care of the royalty runs during the month of January, 1926, and was not executed until the 28th of January, 1926, and not filed for record until February 4, 1926 as shown by this deed. J. T. Harrell was unaware of the ownership of the Wichita Royalty Company of the second sale until along about the time of

the execution of this deed on January 28, 1926,
1460 when G. W. Peckham informed him that he wanted him to convey it to the Wichita Royalty Company.

This royalty known as the Stephens Royalty was at and prior to the sale thereof, paying large revenue.

The records reflect that the first sale of the Stephens Royalty, G. W. Peckham sold on November 9, 1925, this same royalty acquired by G. W. Peckham from C. E. Basham and J. T. Harrell was sold to Wotola Royalties Incorporated, and the Tolowa, as shown by the deed records in Volume 103, page 1415 of the deed records of Wilbarger County, Texas, for a consideration in excess of $34,000.00 on November 24, 1925, as on the first deed, there were revenue stamps of $4.50, and on the second deed of $30.50, showing that the royalty was sold to these two companies for approximately thirty-five thousand dollars.

This royalty began producing in March, 1925. In November, 1925, the price of oil was $2.046. In December, 1925, the price of oil was $2.071, and $2,122. In January, 1926 the price of oil was $2.111.

The income from the royalty from the first sale which was made on November 9, 1925, to G. W. Peckham for $30,000.00 showed that the royalty had produced during the month prior thereto, October, 1925, an amount sold to G. W. Peckham, the sum of $3,702.10. In the month of December, 1925, the royalty known as the second deal had produced during December, 1925, the sum of $3,877.49.

It therefore shows that the royalty on the first
1461 sale would pay out if it continued to produce that amount, within less than ten months, and the second sale at the price of $25,769.07 would pay out in less than seven months. The above gives a detailed account of the transaction known as the Stephens Royalty between George Peckham, myself and the Wichita Royalty Company.

Up until the time Mr. Peckham told me he wanted the deed made to the Wichita Royalty Company, I thought I was dealing straight with George Peckham.

At the time I made the sale of the second royalty in January, 1926, I sold the same for slightly less than we did the first sale in November, but we had acquired the revenue from November and December. At the time of the sale I was acquainted with the reasonable value of royalties of the type I was selling to George Peckham and the property was reasonably worth what we sold it for. Mr. Bond, my partner, did not sell any portion of his. The first tract to the Wotola and the Tolowa companies that I sold to George Peckham in November, sold for more than we sold the second tract to him. I have forgotten the consideration of the Staley Wynne to the Humble Company. There were a number of wells on this sixty acre tract of land, producing from different sands, large producers. Both the first and the second sales were equal amounts, on account of the royalties that had been produced, that is, considering the oil runs.

I also had a transaction with George Peckham
1462 in what is known as the Porter Ranch, I had nothing to do with it other than put up my money. I did not have any title of that property in my name. Knight and Hines were the purchasers, they owned an undivided one-half interest in the property, they were the parties who negotiated the transaction for that tract of land. The land was conveyed to Knight & Hines as trustee, and in the conveyance is reciated who was putting up the money, one-fourth by Harry Hines, one-fourth by W. T. Knight, one-eighth by J. T. Harrell, one-eighth by C. E. Basham, one-eighth by W. L. Robertson, and one-eighth by George W. Peckham. I did not know the Wichita Royalty Company in that transaction. Each time there was a payment due on the Porter Ranch transaction, I paid my pro rata part. The first I knew that the Wichita Royalty Company owned anything in the Porter Ranch was after Mr. Peckham's death, before that I considered that he was individually the owner of the interest in the Porter Ranch just the same as I was. At the time of the purchase of the Porter Ranch, $10,000.00 was paid in cash, and I put up $1,250.00, and here are the

checks making that payment; one November 14, 1925, for $500.00, payable to W. T. Knight; one December 18, for $700.00, payable to Knight & Hines; one for $50.00, December 19, 1925, that is the last one to Kinght & Hines. I do not have the date as to when I made the deferred payments, those notes were taken up from time to time as they matured, but at no time did I fail to pay my pro rata part of the deferred indebtedness. None of those payments were ever made to George Peckham
1463 or anybody connected with the Wichita Royalty Company. Some of those notes were sold, I think Mr. Tad Wilson owned one of the notes, Mr. Ben G. O'Neil owned one of them, and I think one of the notes was renewed a time or two. I think everybody signed the note, that is where we made a mistake, it cost me some money, because some of the parties were not able to pay their pro rata part and it was divided up among the partners. After Mr. Peckham's death, Mr. Scannell informed me that the Wichita Royalty Company was claiming an interest in the Porter Ranch.

I also had an interest in a small royalty, prospective oil property in Wheeler County, with George Peckham—I bought a small interest from him and paid him the money for it. I paid $1,000.00, that is all there was to it, I think they drilled a well on it recently, and I get fifty cents a month out of it. I have the check here dated November 10, 1926, for that royalty. George Peckham gave me a deed. I had nothing to do with the buying of that royalty or the selling of it.

I had nothing to do with the buying or selling of the Porter Ranch to the Wichita Royalty.

I think George Peckham was also interested with me in a cheap government lease in New Mexico. There was a party living in New Mexico sold some of those cheap government leasee for two or three cents an acre, and I bought a few, and I think George Peckham bought some of them, but it was not a joint ownership, they were bought and paid for and forgotten, because they
1464 lapsed, and there was no development. I lost that investment.

I had nothing to do with selling George Peckham the Porter Ranch and I did not have anything to do with causing George Peckham to buy the property known as the Wheeler and Gray County property. I only put my money into all of these properties.

The Marlborough Addition was a joint venture in which I was interested, and also Mr. Peckham, that is, George W. Peckham, W. H. Peckham, J. A. Kemp and myself. George Peckham and W. H. Peckham originated that purchase. They solicited me to go into the deal as a joint venture. I will have to refer to the record for the details; on September 19, 1925, J. A. Kemp and J. T. Harrell and G. W. Peckham and W. H. Peckham each acquired by deed, Highland Irrigation Company, one-fourth interest in 50 acres of land adjacent to the City of Wichita Falls known as the Marlborough Addition. I had nothing to do with the ownership of the Highland Irrigation Company, that was a separate and independent corporation. G. W. Peckham had no interest as far as I know, in the Highland Irrigation Company. The parties paid and agreed to pay the following consideration, a cash payment of $15,477.00, two notes due September 19, 1926, $15,477.00 due September 19, 1927, and two notes due September 19, 1928, in the same amount, making a total consideration of $61,908.00. The Marlborough Addition is adjacent to what is known as the country club estates. We thought it was a valuable piece of property in 1925 we paid a big price for it. There was a great deal
1465 of money being spent on the country Club Addition, at that stage the development in that neighborhood had spent about two million dollars in the acquisition of the property and the development, and the Marlborough Addition joined that country club addition. It was thought to be the best resident section of Wichita Falls. At that time I was fairly familiar with the value of real estate in this vicinity, where the Marlborough Addition was located. I thought the price was reasonable. Under date of January 8, 1926, the same parties acquired an additional 6.01 acres of land from

the Highland Irrigation Company and paid and agreed to pay as follows—that is the second acquisition, the payment of $1,818.00 two notes due January 8, 1927, $1,818.00, due two notes January 8, 1928, $1,818.00, and two notes due January 9, 1929, $1,818.00, making a total consideration of $7,272.00. The note for eight percent from date. I don't think there was any deflation in the value of property between September 19, 1925, and January 8, 1926. I did not have anything to do with soliciting George Peckham to buy. I did not know any parties interested in the deal except J. A. Kemp, G. W. Peckham, W. H. Peckham and myself. I did not know at that time that the Wichita Royalty Company was claiming it. That completed the consideration of that land, out there. There was a substantial outlay for improvements, the land was platted, laid off in city lots, part of it paved, modern conveniences were installed, such as sewer and water and gas and lights. There were some lots sold and houses built by private owners. I
1466 thereafter made payments of my pro rata part on those notes; dated September 22, 1925, paid September 25, 1925, payment to Highland Irrigation Company for $3,869.25; January 8, 1926, $1,818.00; On January 11, 1926, I gave a check to the Highland Irrigation Company for $454.50, which was paid by the bank out of my account. Both of these checks represent my undivided interest in the first purchase price of these two tracts of land, which I exhibit to counsel for Wichita Royalty Company. In September, 1927, I paid my pro rata part of the matured notes, $4,797.87.

Immediately after the purchase of this property in 1925, the owners obligated themselves for advancement of funds to develop the property; on November 20, I paid a check for $250.00 which check was originally written to G. W. Peckham and then changed to W. H. Peckham and indorsed by W. H. Peckham and W. H. Peckham got the money, it was paid by the bank 11-21-25. My check for the matured notes is Plaintiff's Exhibit 92. On September 4, 1926, I gave a check to the Marlborough Addition for

$150.00, "Assessment for expense." That was my pro rata part. On June 3, 1926, check payable to the Marlborough Addition for $3,000.00, "Credited to Marlborough Addition." That was charged to my account. May 19, 1926, check for $2,000.00, payable to the Marlborough Addition, "Assessment for improvements," indorsed by Marlborough Addition by G. W. Peckham. On May 8, 1926, check for $3,750.00, payable to Marlborough Addition, indorsed Marlborough Addition, by G. W.
1467 Peckham, the above checks were for my pro rata part in that matter, and were all charged to my account at the bank, and have been submitted to the attorney for the Wichita Royalty Company. Each of the owners to the Marlborough Addition made similar payments, no owner ever advanced any money for me, I put up my own money. From the time of the purchase of the Marlborough Addition, until the death of George Peckham in November, 1929, I did not know of anyone owning any interest in that addition except J. A. Kemp, G. W. Peckham and W. H. Peckham and myself. I had no notice that the Wichita Royalty Company was claiming an interest in the Marlborough Addition.

Since this case has arisen, I have examined the Marlborough books somewhat.

In the late fall of 1929, we had the stock market crash, with which we are all familiar, and which was the beginning of the depression, that has affected very materially real estate values. After George Peckham's death, E. E. Scannell was appointed sole trustee of the Wichita Royalty Company, and Mr. Scannell asserted ownership to the Marlborough Addition, that is, a one-half interest. He continued to assert that interest during the year 1930. In that year there was a suit filed by the City National Bank against the Wichita Royalty Company. After the suits were filed there was an understanding that there would be some liquidation of some of the property and a payment on the note within a reasonable time,
1468 and on that agreement the suit was dismissed. Prior to the stock market crash there was an

agreement and understanding between the then owners of the Marlborough Addition, that they would change the name of the Marlborough Addition to what is known as the Texas Investment Company; prior to George Peckham's death, plans had been made for incorporating the property known as the Marlborough Addition and the charter had been applied for. After the stock market crash in 1929, E. E. Scannell as sole trustee for the Wichita Royalty Company went forward with the transaction of the Texas Investment Company and proceeded to accept stock in that company for a one-half interest of the Wichita Royalty Company. Mr. Scannell attended all meetings and continued to do so during 1930.

In all my dealings with George Peckham, I did not know of any time during his lifetime that I was dealing with or had any interest in the property in which the Wichita Royalty Company had an interest, save and except the Stephens Royalty. I had no reason to believe at any time that George Peckham was not dealing honestly and fairly with his concern. I had faith in George Peckham's honesty and integrity.

The conveyance of the second royalty, or the second deal on the Stephens Royalty was for less sum than I had previously sold him the first interest.

1469 Re-Direct Examination.

By Mr. Humphrey:

The Stephens Royalty transaction, and the Marlborough transaction, were independent and on my part individually not connected with the bank. The City National Bank did not have any interest either directly or indirectly, in the Stephens Royalty, nor the Marlborough Addition, nor the Porter Ranch.

Prior to the time Mr. Scannell became trustee, I had not had any knowledge of or acquaintance with him, when he became trustee he conferred with me with reference to the Marlborough Addition and with reference to the various checks of George Peckham that he claimed

should have been credited upon certain notes that the books of the Wichita Royalty Company showed should have been paid upon the notes, payable at the City National Bank. I offered Mr. Scannell access to the books and records of the City National Bank at that time, and he came in and made an investigation. I did not know of any agreement, and never made any with Mr. Scannell, whereby he agreed with Bill Peckham that any of these matters should be concealed for a period of time, I was not a party to such agreement, either individually or on behalf of the bank. From the death of George Peckham and prior thereto, I have been willing to furnish to the Wichita Royalty Company or its stockholders, or Mr. Scannell, a complete record of all the ledger accounts and books and records of the City National Bank, and have done so, prior to this hearing, that is, the bank offered those records— I offered the records in connection with the question of credit to Mr. Scannell—that was in 1930. Mr. Scannell never claimed that he had more money
1470 on deposit in this bank, in his records with this bank, than our statement to him actually showed —the only connection with Mr. Scannell, was the amount of the note, $22,000.00.

Re-Cross Examination.

By Mr. Rogers:

The way I understand it, the only controversy in the early part of 1930, was the asserted claim by the trustee of the Wichita Royalty Company for a credit on a group of items that he said should have been credited on the note. The first lawsuit was upon the same notes, executed by the Wichita Royalty Company, that we are suing on now.

When I was giving my statement of the second sale of the Stephens Royalty, I stated, that January 1, 1926, J. T. Harrell and C. E. Basham agreed to sell the Wichita Royalty, that statement was made after I learned that it was to the Wichita Royalty, but in fact at the time the sale

was made to G. W. Peckham—in making my statement, I used the word "Royalty Company," and I meant originally it was to G. W. Peckham.

All the details of the Marlborough enterprise were left to Mr. Peckham, and that continued throughout his life.

Agreement: Mr. Humphrey:

It is agreed the Texas Investment Company was a corporation which took over the assets of the Marlborough Addition. The charter of the Texas Investment Company had been subscribed to and acknowledged
1471 by Mr. Harrell, Mr. Kemp and G. W. Peckham, prior to the death of G. W. Peckham, and these three individuals who subscribed to the charter of the Texas Investment Company also executed a deed to the Texas Investment Company, conveying to the Texas Investment Company the assets of the Marlborough Addition. Neither the charter nor the deed had been filed for record at the time of Mr. Peckhan 's death, but after Mr. Peckham's death and after Mr. Scannell became trustee, the charter was filed, and the deed was likewise filed of record. That is what I understand the facts to be.

Mr. Rogers:

All right. If that is not correct, I will agree upon any correction to be made.

The Witness:

The date the City National Bank of Wichita Falls sold under pledge agreement all of the capital stock of the Texas Investment Company to the City National Bank of Wichita Falls, was December 29, 1930, and the City National Bank of Wichita Falls still owns the capital stock of that corporation. I do not know whether this corporation was dissolved under the laws of Texas when it joined in a petition to remove this case to the Federal Court or not. My indorsement is still on the deficiency to the

City National Bank of Wichita Falls, among the Texas Investment Company notes. I never have sued myself.

As I stated the other day, the estate of Mr. J. A. Kemp is insolvent, and will pay a very small amount, if anything, not in excess of ten cents, however, he has quite a lot of stuff undisposed of. His estate has not paid the unsecured creditors any amount as yet. The ap-
1472 proximate total amount of the outstanding unsecured creditors' claims against J. A. Kemp's estate is three or four hundred thousand dollars. The estate has not been entirely liquidated. The remaining assets of that estate consist largely of real estate, farm lands, and city property. There has been a settlement made on most of the unsecured stuff, and the only encumbrance on most of it is on taxes. Unless real estate values rise considerably, the Kemp estate will not pay the unsecured creditors.

If I recall, the notes executed to the Highland Irrigation Company by the Texas Investment Company, or the Marlborough Addition, are entirely paid, however, the records will show. That enterprise owes the City National Bank the deficiency, and there might be some current expenses, a relatively small amount.

The check dated June 24, 1925, for $206.40, paid June 25, 1925, of G. W. Peckham, and payable to my order, the memorandum in the corner says, "On account of New Mexico investment." That check was paid to me. I think perhaps Mr. Peckham sold some of this New Mexico land and got the money for it, and this was a division. I didn't sell any of it to Mr. Peckham. Mr. Peckham and I bought in the same undivided deal. There is a similar check also to C. E. Basham, who was interested in the New Mexico stuff, and I now turn that check over to counsel for Wichita Royalty Company for inspection.

My $1,000.00 check, to George Peckham, dated
1473 November 10, 1926, has upon it in parenthesis "Wheeler County." That is not my handwriting. The notation is 1/16th royalty, which I wrote, and I wrote the remaining portion of the check. The "Wheeler Coun-

ty," seems to have been written at a different time. I don't know whether Mr. Duncan, my former bookkeeper wrote that "Wheeler County," on there or not. Before the trial in 1932, Mr. Duncan and Mr. King were employed to go into the various accounts and work up information concerning the transactions that were complained of by the Wichita Royalty Company. Mr. Duncan kept my books for a long period of time, two or three years. Mr. King was an accountant here in Wichita Falls. Mr. King made a report to the bank and to counsel, and I had that information at the time of the other trial, but I have not looked at it since that time. Mr. Carson does not have that information. I do not remember at the other trial that counsel had a book with the various transactions set out in it, there might have been one. I do not recall any complaint being made at that time by my auditors not being able to find any checks they wanted. Of course, the check-up at the other trial and this trial are altogether different, in other words, we then begun at about the beginning of the lawsuit, the notes that we filed suit on, we begun in that trial in the early part of 1926, and did not concern our selves with transactions prior to that time, our auditors did not go into it, and neither did yours.

1474 C. A. ROGERS, a witness for the plaintiff, being first duly sworn, examined in chief by Mr. Humphrey, testified as follows:

My name is C. A. Rogers. I am in the oil business. I was acquainted with G. W. Peckham during his lifetime. Plaintiff's Exhibit No. 51, check for $225.00, dated 10-24-25, is a check made to me, commission on royalty deal in Cross Plains, either royalty or lease, I think it was a royalty. We made several purchases for ourselves, and several for other people on a commission basis, I know that it was for commission George Peckham paid on a Cross Plains transaction. At that time there was con-

siderable activity down there, they had a new pool right in town, and that is where it happened.

Cross Examination.

By Mr. Rogers:

It developed that part of this property we bought was just across the street from the pool. We were buying leases and royalties down there. I was connected with the United Royalties Company as its president. I think I made some kind of a deal down there with A. J. Mathis and his wife, and the chances are that we owned part of that, I have a vague recollection of this matter, I looked it up in my old bank statement, and I found this Peckham Cross Plains Royalty $225.00, deposited on October 24, and I am inclined to think that at the same time we purchased or bought an interest in this same Mathis
1475 land. This deed from A. J. Mathis, Defendant's Exhibit 18, seems to have been attached to a draft and drawn on G. W. Peckham, and was delivered to him upon payment of the draft, it further appears that the grantee's name, Wichita Royalty Company was in different typewriting, from the remainder of the instrument. It is my remembrance that I bought that at Mr. Peckham's request, and he paid me a commission on it. I wish to make a statement right here, my partner at that time was J. D. Combes. He was in there and I was in there, we were operating at that time in the south central part of Brown County, which was some thirty miles from there, and we went up and made that play, made a little investment, made some purchases for others on a commission basis, and the whole deal flopped in a short time. My partner might have made this transaction. I note in my record, when I received this $225.00, I immediately paid $112.50 of it to J. D. Combes, we were on a partnership basis. Personally I have no recollection of the details of the transaction, but it must have occurred, or it would not have been on my books and this check would not have had my signature. The property was in the town of Cross Plains, and the production did not stand up,

I have no permanent record in my mind because the thing was over and I forgot it. There was a great deal of trading down there, but it soon stopped. There was probably a little of this excitement south of town, but we were playing north just ahead of it.

1476 Re-Direct Examination.

By Mr. Humphrey:

I bought an interest in Wheeler and Gray Counties from George Peckham to the United Royalties, that was sold to me a year or two ago. I got for that interest seven or nine thousand dollars, I would have to look it up to be exact.

Re-Cross Examination.

By Mr. Boone:

As to this Cross Plains play, I would say it was thirty or forty days after we made our purchase before the boundaries of the field were determined, because when we purchased those properties, they were within a few locations of us, and this depth was about fourteen hundred feet, and they drilled dry holes there. I couldn't tell you much about the development, because we did not spend any time out there, except to look at the general situation. I do not know how long after it started before this property was not considered in the pool, but I would say it was condemned within thirty or forty days.

Re-Direct Examination.

By Mr. Morrow:

The United Royalty Company bought some lots, and that is the property that was condemned in thirty or forty days. The Wichita Royalty Company may have bought some interests in the same thing.

Mr. Rogers asked me about the name being filled in in typewriter, and it may have been signed by the
1477 sellers without knowing exactly what was going to be done with it, and filled in at Cross Plains; frequently a man goes out to buy properties, and it is a matter of indifference with the sellers who the purchaser is, so long as he gets the money, and he goes and fills out his papers without knowing who the purchaser is going to be, then they fill in the name when they get that information. I know I sent one royalty in here from Oklahoma and we would have taken it all, but we had three partners before we finally paid off the bank. It does happen, that a man will go out and get a piece of royalty and then parcel it out, however, I could not say that that is the custom, because usually when we bought anything we had it placed or were going to buy it ourselves.

Re-Cross Examination.

By Mr. Rogers:

As a rule when we bought property we took it in the name of our company. This property at Cross Plains, which Mr. Peckham paid us a commission on, was in the town and to the north of production, the best I remember. It was out on the North edge, but not in the sub-division. I never had anything to do with passing on the title of lands we bought down there. It is my recollection as to this Mathis property that I bought for Mr. Peckham, that I bought it sufficiently ahead of the date of its delivery, as that Mr. Peckham had time to examine the title to see what he was getting, I usually took ten days for examination. Then after the title was examined, that is
1478 the requirement satisfied, Mr. Mathis drew a draft on Mr. Peckham and it came up here and Mr. Peckham paid it, and that is all I know about it. From the description in this deed, it is my judgment that this property is in the north east corner of the townsite, and the production never did extend out there. My town property was between that and the pool, and was condemned a short time after I bought it.

Re-Direct Examination.

By Mr. Humphrey:

I do not mean to testify about this property, that it was bought ten days before Peckham paid for it, I do not remember the details of the transaction, except what I have testified to. There was considerable activity down there which continued until the dry holes came in. I think the activity lasted thirty or forty days.

J. T. HARRELL, recalled for further cross examination by Mr. Rogers, testified as follows:

As to the memorandum substituted for the missing check heretofore testified to, I don't know whether that is in the handwriting of Mr. King or Mr. Duncan, I would not know without comparison of the handwriting. I did not handle any of the detail on the former trial of this case, and do not know about the memoranda
1479 which was placed in the State Court records with reference to any check or ledger account, I don't know whether there were any checks missing at that time or not. The auditors gathered this information up as best they could. I do not know whether my former auditor saw every check that George Peckham wrote in his lifetime, or during the period covered in this controversy or not. So far as I know, at the time of the State Court trial, the Security National Bank records were available, I don't know when they were destroyed. W. H. Peckham, the administrator of G. W. Peckham's estate is friendly to the bank, and a customer of the bank. I do not think I am associated with him in any business deals now. I did not have any interests with him in East Texas, it was in the newspaper that Bill Peckham and I had sold two or three hundred thousand dollars worth of stuff down there, but, unfortunately, I was not associated with him. Bill Peckham has given me access to everything he has of George Peckham's. I do not know wheth-

er the bank has the income tax return of G. W. Peckham for several years or not. I knew that Bill Peckham had sold out his interest in the Marlborough to George Peckham. I don't remember the dedication of the Marlborough, the records would be the best evidence. So far as I know, it is true that the Marlborough Addition plats are filed May 26, 1926, at 2:30 P. M. and upon that plat is an application signed by W. H. Peckham, J. T. Harrell, G. W. Peckham, dated May 24, 1926, and that W. H. Peckham's deed to G. W. Peckham was dated March
1480 6, 1926, and filed for record March 25, 1926, conveying two tracts of land; and that the dedications and restrictions signed by we three on May 24, 1926, filed June 5, 1926, recorded in volume 246, page 278, Deed Records of Wichita County, Texas—so far as I know, those dates are correct. I had very little to do with the spending of money on the Marlborough Addition. The records will indicate such expenditures; I imagine we would not sell any lots before we dedictated the addition.

I testified in the former trial of this case in February, 1932, and in that trial I testified, after refreshing my memory with respect to the Stephens Royalty and various things in regard to that royalty; in that case I testified I sold this to G. W. Peckham, and that the first time I knew I had sold it to the Wichita Royalty Company was when you handed me the original deed, that is in the record you have before you.

Mr. Rogers:

Didn't your own counsel ask you the following questions, and didn't you respond to your own counsel's inquiries as follows:

"Q. What was it you first sold?

"A. We sold to G. W. Peckham half of our interest of 1/16 overriding royalty, 1/32 it would be.

"Q. What did you get for that?

"A. We got thirty thousand dollars.

"Q. Then did you make another sale of it later on?

"A. Yes, sir.

1481 "Q. What did you get for that?

"A. Approximately twenty thousand dollars.

"Q. What was that last transaction, how much in cash and what else did you get, if anything?

"A. There was some trade in the last transaction. Mr. Peckham and I owned a certain piece of land adjacent to Wichita Falls, consisting of approximately forty acres or a little less than forty acres, and that was taken as a part of the consideration from Mr. Peckham on this deal.

"Q. How much did he pay you in cash in addition to this land, or do you recall?

"A. I think he paid us twenty thousand dollars.

"Q. And this interest in this forty acres?

"A. Yes, sir.

"Q. And he paid for it?

"A. Yes, sir.

"Q. And it seems to be a valuable royalty?

"A. Yes, sir, a valuable royalty.

"Q. Did you know who he was buying it for?

"A. Bought it for himself, so far as I know.

"Q. You were not familiar with the other transfer of half of it to Wichita Royalty Company and half of it to some other concern which it is not connected with?

"A. Not at all."

1482 Q. Now, that was the testimony in the other trial, wasn't it, as shown at pages twenty two and twenty-three of the former transcript?

A. I think so.

Q. And wasn't this your further testimony,

"Q. Did that sale of that royalty to George Peckham in any way have anything to do with any transaction you ever had with the Wichita Royalty Company or the bank?

"A. None.

"Q. A separate and distinct transaction between you and Mr. Basham on the one hand and George Peckham on the other?

"A. Yes, sir.

"Q. And Peckham paid for it?
"A. Yes, sir."

Q. That was your testimony on the former trial, too?
A. I believe so.
Q. And upon further direct examination, did you on the other trial give the following testimony?

"Q. No. 84 is the Stevens Royalty that you sold Peckham. The voucher deposit and check were introduced in evidence and marked 'Plaintiff's Exhibits 86, 87 and 88,' respectively, the next one is $15,769.70, check No. 461, No. 84, is the Stevens Royalty, that he bought from you and Mr. Basham?
"A. Yes, sir.
"Q. What does that show No. 84 about the purchase of the one-fourth royalty?
1483 "A. He purchased one-fourth of the royalty under the Stevens forty acres operated by Staley, et al, and Barclay Meadows, in the south Vernon field.
"Q. That is the royalty Mr. Basham sold Mr. Peckham?
"A. Yes, sir.
"Q. You got $20,000.00 cash for it, and a half interest in his farm, is that true?
"A. I got a half interest but not in the farm.
"Q. You and Mr. Basham?
"A. I already owned a half interest in the forty acres that being a half of his which was one-fourth of that land. That left Basham with a quarter interest in the farm and me with three quarters.
"The Stevens Royalty interest cost Peckham $20,000.00, and a half interest in the farm.
"A. Yes, sir.
"Q. Do you know what he paid for the farm?
"A. Yes, sir, $200.00 per acre, I think there was some short, not a full forty acre tract.
"Q. Approximately eight thousand dollars?
"A. Yes, sir.

"Q. In other words, it was worth as much when you traded with Peckham as it was when you bought it?

"A. I think it was not very long after we bought it.

"Q. The royalty cost Peckham $20,000.00 and
1484 a half interest in this farm, that was what it cost Peckham, wasn't it?

"A. Yes, sir.

"Q. And showed he turned his royalty to his company for twenty-five thousand and some odd dollars?

"A. Yes, sir.

"Q. Now, did you know at the time you sold the royalty that he was buying it for his company?

"A. My dealings were with Mr. Peckham personally, he gave me his personal check and his personal notes in payment of the property.

"Q. And what he did with it later on, you were not informed or concerned about?

"A. Or interested.

"Q. But anyway, if he transferred one-fourth of that to his company he transferred half of what he got from you and Mr. Basham?

"A. That is right.

"Q. If he transferred it for $25,769.07, full one-half interest cost him $50,000.00, half interest in this farm, did it not? What did the full interest cost him that he acquired from you and Mr. Basham?

"A. You are talking about the second transaction?

"Q. No, both of them.

"A. It cost him $50,000.00 and a half interest in his farm."

1485 Q. You testified to that, didn't you, Mr. Harrell?

A. I think so.

Q. And was the further question asked you?

"Q. This Stevens Royalty, you testified he paid you and Mr. Peckham $50,000.00 together with a half interest in a little forty acre farm?

"A. That is right.

"Q. And the records show that he sold half of it to his company for approximately $25,750.00?

"A. Yes, sir."

You testified to that, didn't you, Mr. Harrell?

A. I think so.

Q. And didn't you testify at the other trial, pages 224 to 225, that you took this forty acre farm for $2,407.00, being one-half of what was shown by the deed to have been paid by you and Peckham?

A. Whatever the record is.

Mr. Humphrey:

I think the record would be the best evidence. I don't think he can remember what he testified five or six years ago.

Mr. Rogers:

I will read it then.

(By Mr. Rogers):

Q. Page 24, didn't you testify as follows:

"Q. I just want to get the date of this deed on the forty acres, that forty acre deed you were talking about in your testimony is dated when?

"A. From Mr. Curlee?

"Q. On the 6th day of November, 1925?

1486 "A. It is on the 8th day of January, 1926.

"Q. And the consideration was what—"

that does not mean eight thousand, does it?

A. No, sir, not that much, the only difference is fractional acreage.

Q. That is what I say, "Now, the deed, what date from George to you?

"A. From George to me, in January, 1926.

"Q. What is the consideration recited there?

"A. $10.00 and other valuable considerations and the payment of the note for $1,000.00 due one year after date, and note for $1,000.00, due two years after date, August 24, 1925, and note No. 3 for $814.00, said notes described in a deed from J. Kerr filed for record in Volume 250, page 334, etc.

"Q. All right, let us figure out what you say you paid $50,000.00, and half of all of that, how does that figure out, get your pencil and see how much you paid for that, and you say it was worth when you sold it as much as it was when you bought it, which was $7,600 and something?"

"A. Unpaid balance $2,114.00 leaves $4,814.00.

"Q. What, then, did you pay for his one-half interest in dollars, his half interest was worth $4,000.00?

"A. Well, approximately. I testified to that.

"Q. You figured there was an equity of about $1,407.00?

"A. About $2,400.00.

1487 "Mr. Boone:
$2,414.00?

"A. Yes, sir."

that was your testimony, wasn't it?

A. Yes, sir.

Whatever the records show there, is correct, as to the Stephens Royalty and the Curlee deed, those transactions have no connection. I do not remember as to the date, but I do remember why we bought the forty acres, and it had no connection with the Stephens Royalty, because we bought it on speculation, on account of activity in the Sibley-Taylor Addition. I would have to refer to the records to tell you positively and definitely when I first found out that the Wichita Royalty Company was the grantee in that deed, it is dated January 1, 1926, that is

the date of the instrument, the acknowledgment was taken later. I have no recollection as to the date I signed the deed. This is the second Stephens Royalty transaction. I said that this deal became effective at 7:00 o'clock November 3, 1925. I don't know as to that deed, it would be in the contract, the division order, or something of that kind—oil properties have division orders. I would be inclined to think that the deed was executed the date of the acknowledgment. I think the notary public was Mrs. Ward, who worked in my office, or Miss Brewster, she is in California. According to this deed, I knew that the Wichita Royalty Company was acquiring this property by deed from me and Basham, in January, 1926. My transaction was with George Peckham, but the
1488 deed was with the Wichita Royalty Company. We sold to George Peckham and he sold it to the Wichita Royalty Company, as far as I know. It is my testimony that we sold this property to G. W. Peckham and that he sold it to the Wichita Royalty Company and we executed a deed direct to the Wichita Royalty Company. I knew that we were taking in a piece of property as a part of the consideration, for its purchase and sale, that belonged to G. W. Peckham, that was a transaction between Peckham and myself, that was this Curlee tract that Mr. Peckham and I owned jointly. According to this memorandum, Peckham paid $2,567.75, and I took in that from George Peckham as a part of the consideration for my conveying to Peckham the Stephens Royalty to the Wichita Royalty Company, I took in for $3,567.75. Our purchase price was on the basis of $1,000.00 more than he paid for it, I never thought anything about him making a $1,000.00 on the transaction. I knew what we paid for it, and I knew what he was getting for the other property. My trade with George Peckham was verbal. For the Stephens Royalty he was going to pay $20,000.00 in cash. I bought the Curlee land for whatever the deed recites as a cash consideration, which is $4,814.00 and the assumption of certain notes. This land did not change in value in a short time, it was a speculative piece of property.

I took the Curlee land in as a part of the consideration for the conveyance to the Wichita Royalty Company on the second Stephens Royalty Company sale, un-
1489 divided one-half interest in the land, $3,567.75. The revenue stamps on the deed from Harrell and Peckham to the Wichita Royalty Company calls for $26.00 in revenue stamps, and the deed from Harrell and Peckham to the Wichita Royalty Company calls for $26.00 in stamps, which would make the consideration in excess of $25,000.00. All I know is what the records show, that we took in the total consideration, $25,944.07, including interest. I do not have any independent recollection of that trade except what is shown by the original instrument. I suppose I made an income tax report on that, I will bring it in if I can locate it. It looks like George Peckham made $1,000.00 on the land, and I did not question it, I don't think. There is nothing about this trade I am ashamed of, that is a clean cut trade, value received, all the way around. As to why it was that George Peckham and I gave our two checks for $2,700.00 and some odd dollars apiece and that Walter Curlee got a deposit of $4,700.00, I think we made a settlement of some items against that thing. The deed obligated Mr. Peckham and I to pay the 1926 taxes, I don't know when they were paid.

I cannot, for the moment, locate the Curlee deposit slip. I have now found my check for $2,567.75, being the same amount as G. W. Peckham's check, both of them payable on the Curlee land, both of them payable at the City National Bank on January 6, 1926, Mr. Peckham's check being Defendant's Exhibit 154. My account was charged with that amount of money as was also G. W. Peckham's account. W. S. Curlee got credit for $4,749.10,
1490 the balance of it was a matter of some delinquent taxes, the best I can recollect. That would not make the bank's books out of balance the amount of the difference, if we withhold the cash at the time the deposit was made, in order to take care of that difference—we gave Curlee a note and elected to go pay these items our-

selves, that would be what happened. These items that are presented here are checks signed by G. W. Peckham for $2,567.75, and by myself, for $2,567.75, which represents the cash consideration, total cash consideration, of that transaction, and those two checks were charged against the accounts of the respective parties. They are payable to the Curlee lands, from the memorandum. W. S. Curlee may have owed the bank something on that day, that might explain it, and he paid that amount. I think I can satisfy you on that.

When it came to the sale of the Stephens Royalty, then George Peckham's sale to me of his interest in the Curlee tract was a part of the Stephens Royalty, he made $1,000.00 on the land deal. George Peckham kept paying me out of his personal account, even after I knew and learned that he had turned this to his royalty company, naturally I knew that he would be reimbursed by the royalty company for what he was paying, or a portion of it. Undoubtedly it was true that the Royalty Company was paying for the purchase. I do not have any independent recollection of George Peckham telling me at the time of his signing, or at any time, that he turned this property to his royalty company—he undoubtedly made the conveyance to the Wichita Royalty Company. He did
1491 not say to me that he was going to get paid by the Royalty Company, and he would in turn pay me. I never discussed with him why he made the $1,000.00 profit. The records will show as to whether or not I made G. W. Peckham, trustee of the Wichita Royalty Company, a loan of $15,000.00 after January 18, 1926—the City National Bank loaned George Peckham $15,000.00 on January 16, it was. The proceeds were deposited to the Wichita Royalty Company's account January 18, 1926. I have not sought personally to analyze all of these accounts. That is the work of an auditor or an accountant.

Frequently when loans are made by a bank, of $15,000.00 or $25,000.00, the lending banker inquires the purpose for which the proceeds of the loan is going to be used.

Neither of the $2,567.75 checks, Curlee land, bear in-

dorsements; that would indicate that the bank handled those items for Mr. Curlee and gave him a deposit slip for it.

When the bank takes properties as security on substantial loans, they sometimes have the titles examined, it depends on the individual and the amount of the loan. There was a time several years ago when the titles were not examined, of course, where there is a lot of property and a financial statement is the usual thing. I did have a financial statement of the Wichita Royalty Company or G. W. Peckham, but I don't know whether they are here now or not, here is one—I have a list of properties that was submitted in connection with the line of credit, submitted by George Peckham April 30, 1928, for
1492 the Wichita Royalty Company, showing a list of their properties. This instrument bears no signature. This is George Peckham's memorandum down here, "Income $1,500.00 per month." That is in his handwriting.

I took blanket deeds of trust from the Wichita Royalty Company, I have taken several that have been released. In taking the security, I did not have the titles examined, because the Wichita Royalty Company made a very good financial showing. They owed nobody except us. George Peckham kept his indebtedness pretty well confined to the bank, and we felt perfectly comfortable on his situation. We took the deed of trust as a safeguard. I knew from general information the connection George Peckham had with the Wichita Royalty Company, he handled the business. I never looked into his authority, it was common knowledge that he was trustee of that company.

As to what notes were involved in the bank's transaction with the directors on December 31, 1931, when the directors borrowed $100,000.00 at the First National Bank, I had rather look that matter up from the records, and give you a detailed account, I can tell you the purpose of the loans; it would be the individual deposit, not a capital structure deposit. The thing that we were suffering for at that time was shortage of cash and if you made

a deposit in the bank, that would help the cash position of the bank, not necessarily a contribution to capital. The cash would be deposited to all their accounts, or to one trustee, until the item was liquidated at the
1493 other institution. The bank would owe the directors—I can get that information and tell you exactly how it happened. That $100,000.00 was not a bank transaction, it was an individual transaction. I mean by that, of course, if it was deposited in the bank, the bank will owe the directors just like it will owe you, if you deposited $10,000.00 in the bank, it was a deposit liability. We needed cash on that date and that provided the cash. The proceeds of that note went to the credit of the City National Bank in the First National Bank of Wichita Falls. I don't know what they did with the proceeds. We do not have a general ledger of the bank, we have a sheet that we put in the machine there on which is the notes and transactions through the day, it is a detailed register, daily statement. This is December 26 to January 8, 1932.

As to the expense of this litigation, I expect my counsel to be reasonably paid. Mr. Carson is working on a regular salary, but Mr. Lambert and Mr. Carson and my counsel and many bookkeepers and stenographers have been working on this matter. I don't think we have had much outside help. We have paid the Court cost and traveling expenses, etc., in a substantial sum. I will prepare for you a statement as to what we have spent in this matter.

Re-Direct Examination.

By Mr. Boone:

Mr. Rogers read my testimony with reference to the second sale of the Royalty to George Peckham when I said I had just gotten $20,000.00. half in-
1494 terest in the Curlee land out there—I remember him reading that testimony—but I will say that at the time of the other trial of this case I had not completely investigated the matter, and we have found some additional items. I found $22,201.00 and some odd cents that

we paid on that, which was the total consideration for the second payment, plus a half interest in the Curlee land. In addition thereto, when this land was purchased from W. S. Curlee, I have since found, and now have already introduced in evidence, George Peckham's check to the Curlee land for $2,567.75, Defendant's Exhibit 154.

Mr. Boone:

We introduce a check of the same date, as Defendant's Exhibit 155.

DEFENDANT'S EXHIBIT 155.

Wichita Falls, Texas, 1-8-1926, The City National Bank of Wichita Falls "2" "19". Pay to the order of Curlee Lands $2567.75, 176762. (Perforated) Paid 1-11-26 No indorsements (Signed) J. T. Harrell.

(The above exhibit is the same as Defendant's Exhibit No. 165. hereinafter photostated and placed in the record at the request of Mr. Boone).

The Witness:

On September 17, 1926, I paid some additional amounts on the Curlee lands, taking up some of the indebtedness, $1,050.00.

That deed that was introduced in evidence from J. T. Harrell and C. E. Basham to Wichita Royalty
1495 Company, was executed after he gave me those notes for the purchase price; the deed shows to be dated January 1, and the original deed is dated, being Defendant's Exhibit 8, January 1, 1926, the acknowledgment January 28, 1926, and the checks paying off the first note January 25, 1926, Plaintiff's Exhibit 69. $28.00 of that check was interest, showing the notes he had theretofore executed for that much interest; that check was given before this deed was executed here by me to the Wichita Royalty Company. At the time I sold this second

sale of Stephens Royalty to George Peckham, up until this deed was executed on the 28th of January, 1928, I did not know anything about the Wichita Royalty Company having any interest in it, the entire transactions were with George Peckham.

Re-Direct Examination.

By Mr. Humphrey:

Neither of the checks number 237 and 246, plaintiff's exhibits 161 and 162, were deposited to Peckham's individual account in the City National Bank, because they are made payable to the Security National Bank and bear the indorsement of that bank. If I answered that either of these checks were deposited to the credit of G. W. Peckham, it was an error on my part. In 1926, I had no knowledge of George Peckham making any profit on any deal he ever had with the bank. I knew nothing about the $1,000.00 profit on the Curlee tract. I did not know anything about the consideration moving between George Peckham and his company for the Stephens Royalty.

1496 My transactions and the payments on that royalty were with George Peckham personally. He paid me his personal check and conveyed to me a half interest in the Curlee tract, I had no knowledge as to what consideration the royalty company paid him. As to my knowledge or information as to what profits Peckham made, it is merely a conclusion reached from the evidence as introduced here, and these instruments. As to my recollection of the transaction between myself and Peckham or Peckham and the royalty company, I do not recall anything about the sale of the Stephens Royalty and do not remember the details of the transaction. On the former trial I testified as to the consideration, from information furnished me by the bookkeeper and from the investigation made by the accounts with reference to this matter. I have presented Peckham's checks and Mr. Basham's check and my checks in support of this testimony.

I have never employed anybody and Mr. King did not undertake to make a complete audit between Peckham and the Wichita Royalty Company and the City National Bank, or any other bank that Peckham did business with. Mr. King was not instructed, and did not undertake to examine the books of the Wichita Royalty Company, I have not had that done until recent months, after the last trial.

Plaintiff's Exhibit 196, is a statement of the royalties Mr. Peckham left with the bank, showing the royalties owned by the Wichita Royalty Company as of April 30, 1928. The memorandum at the end of that is in Mr. Peckham's handwriting, and says, "$1,500.00 per month income."

Mr. Humphrey:

We offer the statement in evidence.

1497 PLAINTIFF'S EXHIBIT 196.

Oil Properties Owned.

Wichita Royalty Company, Wichita Falls, Texas.

April 30, 1928.

No.	Description	Acres
1.	29/640 of the total production, Northwest corner Block 75, Northwest Field, Burkburnett, Texas	3
2.	50/520 of 3/8 of the total production, Weber Lease, Block 88, Northwest Field, Burkburnett, Texas	10
3.	1/48 of the total production, Block 1, Cannon-Orchard Addition, Burkburnett Townsite	2½
4.	1/64 of the royalty, Evans Tract, Block 818, Northwest Field, Burkburnett, Texas	640
5.	3/22 of the royalty, Lots 19 and E½ 20, Goodwin Addition, Burkburnett Townsite	3

No.	Description	Acres
6.	2/21 of the royalty, Block 1, Lot 11, Goodwin Addition, Burkburnett Townsite...	2½
7.	5/12 of the royalty, North half Block 22, Burkburnett Townsite	2½
8.	1/16 of the total production, 40 acres of Block 819, Michna Land, Northwest Field, Burkburnett, Texas	40
9.	7/192 of the total production, Pickle Lease, Burkburnett Townsite	2
10.	3/64 of the total Production, Lot 4, Sarah Tankersley Survey, Young County, Texas	40
11.	1/10 of ⅜ of the total production, Lot 9, Block 819, Northwest Field, Burkburnett, Texas	5
12.	1/10 of ⅜ of the total production, Lot 10, Block 819, Northwest Field, Burkburnett, Texas	5
13.	(a) 25/520 of ⅜ of the total production, Weber Lease, Block 88, Northwest Field, Burkburnett, Texas	10
	(b) 7/256 of the total production, West 2½ acres, North 5 acres, North 60 acres, Van Cleve Farm, Burkburnett, Texas..	2½
	(c) 5/360 of 7/16 of the total production, South 5 acres, West 12½ acres, Southwest Quarter Block 97, Northwest Field, Burkburnett, Texas	5
	(d) 1/112 of the total production, Lots 1 to to 14 inc. College Heights Addition, Burkburnett Townsite	2½
14.	7/384 of the total production, G. W. Whitman Lease, Taylor Farm, Block 97, Northwest Field, Burkburnett, Texas...	7½
15.	1/6 of the royalty, Block 1, Lot 3, College Heights Addition, Burkburnett Townsite	2½
16.	1/16 of the royalty, A. L. Owen's Land, Bunger Field, Young County, Texas.....	80

No.	Description	Acres
17.	1/8 of the royalty, A. L. Owen's Land, Bunger Field, Young County, Texas.....	80
18.	1/8 of the royalty, J. A. Driver Land, Mid-Continent Pet. Corp. Lease, West 40 acres of South 80 acres, Aynesworth Survey, Young County, Texas	40
19.	1/8 of the royalty, J. A. Driver Land, Continental Lease, East 40 acres South 80 acres, Aeynsworth Survey, Young County, Texas	40
20.	5/64 of the total production, Lot 4, Sarah Tankersley Survey, Young County, Texas	40
21.	1/16 of the royalty, J. A. Driver Land, Sun Lease, South 40 acres, West 80 acres, Auburg Survey, Young County, Texas..	40
22.	1/24 of the royalty, Amerada Lease, Blaydes Farm, Empire Field, Stephens County, Okla.	40
23.	1/32 of the royalty, R. D. Owen's Land, Bunger Field, Young County, Texas	160
24.	1/16 of the royalty, A. L. Owen's Land, Bunger Field, Young County, Texas	80
25.	1/4 of the royalty, R. D. Owen's Land, Bunger Field, Young County, Texas	160
26.	1/24 of the royalty, Seaboard Oil & Gas Company Lease, Bunger Field J. W. Hughes Land, Young County, Texas	100
27.	1/48 of the royalty, McClure Tract, Eastland County, Texas	84
28.	11/384 of the royalty, West half of B. F. Eakin Tract, Slick Lease, Pioneer Field, Eastland County, Texas	50
29.	1/32 of the total production, J. E. Musick Lease, Outer Block 20, Burkburnett, Texas	3
30.	3/416 of the total production, Ellis Tract, Mexia Field, Limestone County, Texas...	50

No.	Description	Acres
32.	1/16 of the total production, Outer Block 24, Burkburnett, Texas	8
33.	1/10 of the royalty, Lou Catt Lease, W½ NW¼ Section 2-15-8, Creek County, Oklahoma	80
35.	1/10 of the royalty, Jomack Lease, W½ of NW¼ of SE¼ Section 28-16-9, Creek County, Okla.	20
36.	1/48 of the royalty, McGaw Tract, Pure Oil Company Lease, Currie Pool, Navarro County, Texas	40
37.	1/48 of the royalty, McGaw Tract, Homa Okla Lease, Currie Pool, Navarro County, Texas	41
38.	17/42 of the royalty, Bob Davis Farm, NE¼ of SW¼ Section 23-16-9, Creek County, Oklahoma	—
41.	1/16 of the royalty, Mary McIntosh Farm, C. E. Cover Lease, Creek County, Okla.	80
44.	1/72 of the royalty, J. W. See Farm, NW¼ of Section 15-24-1, Noble County, Okla.	160
45.	1/16 of the royalty, Mary McIntosh Farm, W½ of SW¼ Section 29-15-10, Creek County, Okla.	80
46.	1/7 of the royalty, Block 2, Lot 7, L. & S. 2nd Addition, Burkburnett Townsite	3
50.	1/20 of the royalty, Minnie McIntosh Farm, SW¼ of SE¼ of Section 29-15-10, Creek County, Okla.	40
51.	1/16 of the royalty, J. A. Driver Land, Sun Lease, South 40 acres, West 80 acres, Auburg Survey, Young County, Texas	40
52.	1/48 of the royalty, McGaw Tract, J. K. Hughes Lease, Currie Pool, Navarro County, Texas	40
53.	3/64 of the royalty, J. A. Novotny Farm, White Eagle Lease, Noble County, Okla.	40

No.	Description	Acres
54.	1/16 of the total production, Tillman-Gesen Well, Section 32-16-9, Creek County, Oklahoma	1
55.	1/72 of the royalty, J. W. See Farm NW¼ Section 15-24-1, Noble County, Okla.	160
56.	1/8 Overriding Royalty, Ellis Holmes Farm, J. D. Davis lease, S½ of SW¼ Section 34-12-12, Okmulgee, County, Okla.	80
57.	3/64 of the royalty, J. A. Novotny Farm, Prairie O. & G. Lease, Noble County, Okla.	40
58.	3/64 of the royalty, J. A. Novotny Farm, White Eagle Lease, Noble County, Okla.	40
59.	3/64 of the royalty, J. A. Novotny Farm, Prairie O. & G. Lease, Noble County, Okla	40
65.	1/32 of the royalty, J. A. Novotny Farm, White Eagle Lease, Noble County, Okla.	40
66.	1/16 of the royalty, J. A. Novotny Farm, Prairie O. & G. Lease, Noble County, Okla.	40
67.	1/8 of the royalty, Ellis Holmes Farm, Eagle Picher Lease, N½ of SW¼ Section 34-12-12, Okmulgee County, Oklahoma	80
68.	1/4 of the royalty, Ellis Holmes Farm, J. D. Davis Lease, S½ of SW¼ Section 34-12-12, Okmulgee County, Okla.	80
70.	1/8 of the royalty, Ellis Holmes Farm, Eagle Picher Lease N½ of SW¼ Section 34-12-12, Okmulgee County, Okla.	80
71.	3/16 of the royalty, Grimshaw Farm, J. E. Dowdle Survey, Young County, Texas	160
72.	(a) 1/320 of the royalty, Beverlin Farm, NW¼ Section 34-25-1, Kay County, Okla.	160
	(b) 1/64 of the royalty, C. W. Goltry Farm, W½ of NE¼ Section 34-25-1, Kay County, Okla.	80

No.	Description	Acres
	(c) 3/640 of the royalty, McDaniel Farm, E½ of NE¼ Section 34-25-1, Kay County, Okla.	---
72.	(d) 1/256 of the royalty, Carmichael Farm, Lots 1 and 2 and S½ of NE¼ Section 3-24-1, Noble County, Oklahoma	160
73.	9/40 of the royalty, Ellis Holmes Farm, Eagle Picher Lease, N½ of SW¼ Section 34-12-12, Okmulgee County, Oklahoma	80
74.	1/32 of the royalty, W. A. Brown Farm, West ½ of 100 acre tract of the Northeast corner of J. B. Barry Survey, Navarro County, Texas	50
77.	1/8 of the royalty, W. 30 acres of E. 50 acres of N. 80 acres of Block 1593, T. E. & L. Co. Sur., L. M. Hayter Land, and N. 100 acres of S. 240 acres of Blk. 1598, W. O. Hayter Land, Archer County, Texas	130
78.	1/16 of the royalty, Block 46 of Meade L. M. Pasture Sub., of D. G. Thomas Survey, Abst. 458, Archer County, Texas	125
79.	1/16 of the royalty, Block 9 of Crawford Pasture Sub. of I. Holman Sur., J. B. Routan Land, Archer County, Texas, and Young County, Texas	117
80.	1/16 of the royalty, N. 40 acres Blk. 21; S. 32 acres Blk. 21; S. 60 acres of W. 80 acres Blk. 22; N. 25 acres of E. 50 of W. 100 Blk. 19; and E. 60 acres of W. 160 Blk. 19, Anderson South Pasture Sub., Archer County, Texas	217
81.	1/4 of the royalty, E. 30 acres of 71 acre tract out of D. Milligan Survey, Callahan County, Texas	30
82.	1/8 of the royalty, E. ½ Section 4, B. B. B. & C. R. R. Co. Sur. Cert. 692, Young and Archer Counties, Texas	320

No.	Description	Acres
84.	1/4 of 1/8 Overriding royalty, S. 40 acres of N. 60 acres of W½ of NE¼ Sec. 83, Blk. 14, H. & T. C. R. R. Co. Sur., Wilbarger County, Texas	40
85.	1/32 of the royalty, W½ of SE¼ of Sec. 43, Blk. 24, H. & G. N. Ry. Co. Sur., Wheeler County, Texas	80
86.	1/16 of the royalty, NE¼ of Sec. 47, Block 24, H. & G. N. Ry. Co. Sur., Wheeler County, Texas	160
87.	1/32 of the royalty, E½ of Sec. 54, Block 24, H. & G. N. Ry. Co. Sur., Wheeler County, Texas	320
88.	1/16 of the royalty, E½ of Sec. 57, Block 24, H. & G. N. Ry. Co. Sur., Wheeler County, Texas	320
89.	1/16 of the royalty, N½ of Sec. 45, Block 24, H. & G. N. Ry. Co. Sur., Wheeler County, Texas	320
90.	1/8 of the royalty, S½ of Sec. 61, Block 25, H. & G. N. Ry. Co. Sur., Gray County, Texas	320
91.	1/4 of the royalty, W½ of SE¼ and NE¼ of the SE¼ of Sec. 59, Block 25, H. & G. N. Ry. Co. Sur., Gray County, Texas	120
92.	1/8 of the royalty, NW¼ of Sec. 60, Block 25, H. & G. N. Ry. Co. Sur., Gray County, Texas	160
93.	1/2 of the royalty, S½ of NE¼ Sec. 35, Tn. 19 N., R. 21 W., Ellis County, Okla. Also full 7/8 oil and Gas Lease thereon	80
94.	1/2 of the royalty, Section No. 54, as the same is shown by the W. D. Twitchell map of the Subdivision of the Bravo Ranch lands, Hardey County, Texas	640
95.	3/16 of 7/8 Lease, 80 acres E. Half of Lot 10, North Anderson Ranch, S. P. Survey No. ..... Archer County, Texas	80

No.	Description	Acres
96.	1/4 of the royalty, SW 60 acres E: Polk Land, Abst. 717 of Wm. Polk Preemption Survey, Archer County, Texas, Also ¼ of ⅞ Lease on the west 40 acres of the same land	60
97.	7/100 of Total Production, E½ of W½ of S½ of SE¼ of Sec. 30, Blk. 9, and NW¼ of W½ of E½ of S½ of SE¼ Sec. 30, Blk. 9, H. & T. C. Ry. Co. Sur., Wilbarger County, Texas	25

1506 In the margin under "97" appears T. J. Milner.

On foot of Exhibit in ink appears "Income $1500 per mo."

The Witness:

Mr. Peckham furnished, from time to time, in the beginning of these transactions, the balance sheets of the Wichita Royalty Company, here is one dated January 10, 1922, one for May 31, 1922, December 20, 1922, and January 15, 1923. The last one shows a capital investment of $714,246.00, surplus $21,996.07, and shows indebtedness of $34,874.12.

Re-Cross Examination.

By Mr. Rogers:

We spent considerable time recently in working up this matter, Mr. Carson has spent most of his time during the last seven months, and we have had a certified public accountant for three or four months.

The Marlborough Addition is a suburban venture.

I don't know whether the estate of G. W. Peckham is insolvent or not, I don't know whether he owes any money, I don't think he has any assets. I would have to refer to the records to see whether or not the bank was

paid all that Mr. Peckham owed it. The administrator sold all of his assets that I know anything about, within a few months after his death. The assets that we had a lien on are all gone.

Aside from the bills receivable, the assets of the old bank are real estate and perhaps some mineral interests.

The bank loaned the money to Mr. Peckham in January, 1926, of $15,000.00, and also March, 1926,
1507 $25,000.00, I was the contact officer for the bank. I wrote out the deposit slip. I think the records indicate Mr. Peckham was the indorser on that obligation. I don't know whether Mr. Peckham put $17,000.00 of the $25,000.00 to his own account or not, that will come under the accountant's analysis. This is the note of March, 1926, Mr. Peckham is an indorser, signed as a surety, the proceeds of the note went to the Wichita Royalty Company, it is not an uncommon practice for a surety to sign on the face of the note. The bank was looking to the Wichita Royalty Company first. He renewed the note May 30, 1926, and signed like he did the original, it was renewed again on August 28, 1926, November 26, 1926, January 11, 1927. I believe that is another note. The note you now hand me, October 13, 1926, is a renewal of the $15,000.00 loan of January 15, 1926. The one of January 11 is also a renewal. In all of these notes G. W. Peckham signed on the face, after the Wichita Royalty Company.

Mr. Rogers:

I offer these instruments in evidence and ask that they be photostated, marked "DEFENDANT'S EXHIBIT 156."

(Said exhibit consisting of the following notes):

Note dated Wichita Falls, Texas January 11, 1927. In the amount of $15,000.00, drawing 8% interest per annum, due ninety days after date, payable to the City National Bank, signed by Wichita Royalty Company by G. W. Peckham, trustee, G. W. Peckham.

Note dated Wichita Falls, Texas, August 28, 1926. In the amount of $25,500.00, due ninety days after
1508 date, drawing interest at the rate of 8% per annum. Payable to the City National Bank of Wichita Falls, Texas, signed Wichita Royalty Company by G. W. Peckham, Trustee, G. W. Peckham.

Note dated Wichita Falls, Texas November 26, 1926. In the amount of $25,500.00. drawing 8% per annum, due ninety days after date, payable to the City National Bank of Wichita Falls. Signed Wichita Royalty Company, by G. W. Peckham trustee, G. W. Peckham.

Note dated Wichita Falls, Texas, October 13, 1926, in the amount of $15,000.00, bearing interest at 8% per annum, and due ninety days from date. Payable to the City National Bank of Wichita Falls. Signed Wichita Royalty Company by G. W. Peckham trustee, G. W. Peckham.

Note dated Wichita Falls, Texas, May 30, 1926, in the amount of $25,500.00, due ninety days after date, bearing interest at the rate of 8% per annum. Payable to the City National Bank of Wichita Falls, signed Wichita Royalty Company by G. W. Peckham, Trustee, G. W. Peckham.

Note dated Wichita Falls, Texas, March 1, 1926, in the amount of $25,000.00, due ninety days after date and bearing eight percent interest per annum. Payable to the City National Bank of Wichita Falls, signed Wichita Royalty Co. By G. W. Peckham trustee, G. W. Peckham.

1509 Mr. Rogers:

We have heretofore introduced in evidence the following bank records: Those of the Wichita Royalty Company from April 1, 1923 to the date of its closing, that is the date—both as to the deposit and the liability record. Also, those of G. W. Peckham for the same period of time, including both the deposit and the liability record. Those

of J. T. Harrell from January 1, 1926, to April 1, 1926, including both his deposits and liability account and the bank records of W. H. Peckham for the entire month of March, 1926.

J. T. HARRELL, recalled for further cross examination by Mr. Rogers, testified as follows:

I have a list of the expense paid by the bank in this litigation.

Mr. Rogers:
We offer it in evidence, Defendant's Exhibit 157.

1510 DEFENDANT'S EXHIBIT 157.

Legal Services and Other Expenses.

Wichita Royalty Comany.

Date		Amount
2-17-32	Mrs. A. B. Eichelberger, Court Cost	$ 40.00
3- 8-32	Bullington, Humphrey & King, Attys'. Fee	2,500.00
3-23-32	Attorneys' Fee	33.50
4-18-32	W. E. Donnelly, Court Reporter	100.00
4-22-32	Sheriff, Ellis Co. Survey Papers	8.40
4-23-32	Court Clerk, Stephens Co., Okla	25.00
12-18-33	Rec. fees a/c Wichita Roy. Co., Paid to Bullington, Humphrey & King	8.75
4- 5-34	Bullington Humphrey & King	10.00
5-11-34	Court Costs, Archer Co.	45.95
6- 8-34	Court Costs, Gray Co.	65.64
5-25-34	Bullington, Humphrey & King, Expense Wichita Royalty	6.75
11-17-34	Bullington, Humphrey & King, Wichita Royalty	28.75
7-17-35	Weeks & Morrow	27.50

Date		Amount
5-27-36	Dist. Clerk, Wichita County, Costs..	212.60
5- 7-36	S. A. Philquist, Clerk Supreme Court	641.35
5-28-36	Brown & Cund, Attorneys, Court Costs, Stephens County, Okla....	75.00
6- 9-36	Sheriff Wichita Co., Court Costs..	499.95
7-27-36	Dist. Clerk, Wichita County, Costs..	292.05
8- 3-36	Tarlton Morrow, Attorney's Fee ..	2,000.00
5- 2-36	Tarlton Morrow	1,000.00
1-29-36	Forms	80.00
10-17-36	Bullington, Humphrey & King....	2,500.00
10- 2-36	Wichita Falls Blue Print	94.70
10- 7-36	H. H. Carson	22.75
12- 9-36	Wheeler Abstract	33.00
12- 5-36	Wichita Royalty Co., Expense.....	18.00
12- 9-36	General Abstract	45.00
12- 7-36	Wichita Falls Blue Print	8.40
12-16-36	Expense, Wichita Royalty Co.	13.50
12-31-36	Carson & Lambert	126.35
12-31-36	J. E. Collins, County Clerk	11.75
1-11-37	J. McFall	10.75
1- 6-37	County Clerk, Archer Co.	11.25
2- 4-37	T. E. Irby, Jr.	853.30
1-11-37	Wichita Falls Blue Print Co.....	6.30
1-12-37	Cigars	10.60
1-27-37	K. M. Patterson	5.00
2-17-37	P. H. Lambert	400.00
2-20-37	T. C. Irby, Jr.	318.10
	Total	$12,189.94

The Witness:

These items were not all paid by the old bank, I will have to identify each item for you. Those expenses were paid either by the old bank or the new. I don't think I have a detailed statement of what I paid, I have paid Mr. Boone $2,500.00, and there has been some incidental expense that I do not have a memorandum of, three or

four or five hundred dollars. I will get that for you. This list is correct down until this morning.

We are working on the information with reference to the Curlee transaction now, and also the income tax matters.

Mr. Rogers:

What are the facts with reference to the Porter Ranch?

Mr. Humphrey:

I can give you the facts. The first note was paid, and the last two notes of $7,366.00 and $7,367.00 were outstanding. The record total showed a beneficial interest in George Peckham. He was dead. There had been a suit filed by the Wichita Royalty Company to assert title to that interest. The Wichita Royalty Company relinquished their interest and Tad Wilson and Ben O'Neal sued for the land on the superior title, and took judgment for that land.

1513 The Witness:

In June, 1935, the land was sold to a fellow by the name of Wolfe.

Mr. Humphrey:

There was no contest on it, the land was not in excess of the value of the notes, and the Court entered a judgment vesting title in the notes in the land in June, 1935.

The Witness:

I have the books as to the December, 1931 transaction, December 29, two notes in the sum of $50,000.00 each were executed by directors and principal stockholders—some of the principal stockholders—of the City National Bank in favor of the First National Bank of this city. The proceeds of that loan were applied, credited, on the obligation of the City National Bank due the First National Bank. In other words, the City National Bank had bills payable due the First National Bank of this city, $150,000.00, and the proceeds of that loan, which was $100,000.00 was credited on that bills payable. The note

was dated December 29, 1931. The actual entry on the bank's book was December 31, 1931. That is the date the note was discounted by the First National Bank. On the same date, $100,000.00 worth of bills receivable were taken out of the files of the City National Bank and set over for the benefit of the makers of the two $50,000.00 notes. Our bills receivable of the City National Bank were reduced in the amount of $100,090.22. The $90.22 was an amount to balance the note—in other words, we could not get an exact $100,000.00 worth of notes so we got within ninety and twenty-two cents, and
1514 made a charge of refund of interest for that amount in order to balance the item. The interest rebate is here. The notation is "Refund of bills payable account of overnotes." It is a memorandum to balance the books. The $100,090.22 of notes held for the benefit of those directors until that obligation was taken care of then came back into the bank, either paid or came back. We have no record of whose notes those were. In explanation of that I will say it was a temporary matter and it was for the purpose of reducing the overline at the First National Bank of this City. They were desirous of being of assistance to us at that time, and the $150,000.00 was an overline with them and the directors were on the obligations at the time and in order to put them in position where they would not be criticised in the examination the directors notes were placed over there and the bank was given credit for it. As to the renewal of the $150,000.00, October, 1931, indebtedness to the First National Bank on January 7, 1932, I had rather you would get that information from somebody else.

H. H. CARSON, recalled for further cross examination by Mr. Rogers, testified as follows:

I have before me photostatic copies and the original records of the First National Bank, covering the
1515 period of time shown by them. This large sheet is the liability journal sheet. The records of the

bank show the daily note transactions. On this record is entered the renewals of the note, and the new notes and the notes paid and credits on the notes and the balance. The date it is handled, the number of days that the note runs, and the number of the note, the indorser, the security, the officer handling the item, interest or discount and maturity date, rate of interest, charges on the notes made, and credit on the notes paid and the new balance, also the maker. If we rediscount an item ordinarily it is entered on there, and it would ordinarily be entered on here if it went out of the bank on a repurchase agreement, it would also be entered here if the note were sold. This one hundred thousand dollar transaction in December, 1931, does not appear anywhere on the notes journal register, the only place it does appear is in the general books.

Mr. Rogers:

I offer in evidence the records of the First National Bank and the City National Bank, excluding the journal, in that it appears that this note transaction is not entered thereon. I wish these instruments photostated.

(Marked "Exhibits, Defendant's, 158, 159, 160 and 161").

THE FIRST NATIONAL BANK

WICHITA FALLS, TEXAS

LIABILITY LEDGER

NAME City National Bank,

ADDRESS City.

DATE OF ENTRY	DATE OF NOTE	NUMBER	CL	R/N	COLLATERAL	ENDORSER	CUR	DEBIT	MATURITY	CREDIT	INTEREST	BALANCE
					FORWARD							
OCT 9 31	OCT 9 31	82873	D	N	J T HARRELL, R O HARVEY, W C ROBERTSON, L A CULLUM, F P TISDERLAKE, J J PERKINS FRANK KELL, W H MARTIN, J A KEMP, C E BARNES, O A JONES, LANGFORD INV. CO TR			50000.00	JAN 7 32		750.00	
OCT 9 31	OCT 9 31	82874	D	N	SAME AS ABOVE			50000.00	JAN 7 32		750.00	
OCT 9 31	OCT 9 31	82875	D	N	DO			50000.00	JAN 7 32		750.00	150000.00
DEC 31 31		82873	D							50000.00		
DEC 31 31		82874	BD							50000.00		50000.00
JAN 7 32		82875	D							50000.00		
JAN 7 32	JAN 7 32	85129	D	R	ENDORSED AS ABOVE			50000.00	APR 6 32		750.00	50000.00
JAN 5 32	JAN 7 32	86454	D	R	ENDORSED		COM	50000.00	APR 6 32		484.67	
JAN 5 32	JAN 7 32	86455	D	R	DO		COM	50000.00	APR 6 32		484.67	150000.00
APR 14 32		85129	D							50000.00		
APR 14 32		86454	D							50000.00		
APR 14 32		86455	D							50000.00		
APR 14 32	APR 6 32	87596	D	R	ENDORSED BY BOARD OF DIRECTORS		COM	25000.00	JUL 5 32		375.00	
APR 14 32	APR 6 32	87597	D	R	SAME		COM	100000.00	JUL 5 32		1500.00	125000.00
JUL 18 32		87596	D							25000.00		
JUL 18 32		87597	D							100000.00		
JUL 18 32	JUL 5 32	89536	D	R		ENDORSED	COM	25000.00	OCT 3 32		375.00	
JUL 18 32	JUL 5 32	89537	D	R		DO	COM	100000.00	OCT 3 32		1500.00	125000.00
OCT 6 32		89536	D							10000.00		
OCT 6 32		89836	D							14999.12		
OCT 6 32		89537	D							100000.00		
OCT 6 32	SEP 5 32	91265	D	R	ENDORSED		COM	14999.12	NOV 2 32		1125.00	114999.12
OCT 6 32	SEP 5 32	91266	D	R	DO		COM	100000.00	NOV 2 32		1125.00	114999.12
NOV 3 32		91265	D							14999.12		
NOV 3 32		91266	D							100000.00		
NOV 3 32	NOV 2 32	99843	D	R	ENDORSED BY BOARD		COM	110000.00	JAN 31 33		1650.00	110000.00
NOV 26 32		91843	D							9925.39		100074.61
FEB 20 33		91843	D							100074.61		
FEB 20 33	JAN 31 33	94168	D	R	ENDORSED BY BOARD OF TRUSTEES		COM	100000.00	MAY 1 33		1500.00	100000.00
MAR 27 33	MAR 27 33	94764	C	N	COLLATERAL DEP.			20000.00	DEMAND		81.97	120000.00
MAR 28 33		94764	C							4745.75		115254.25
APR 7 33		94764	C							15254.25		100000.00
APR 15 33		94168	D							100000.00		0.00

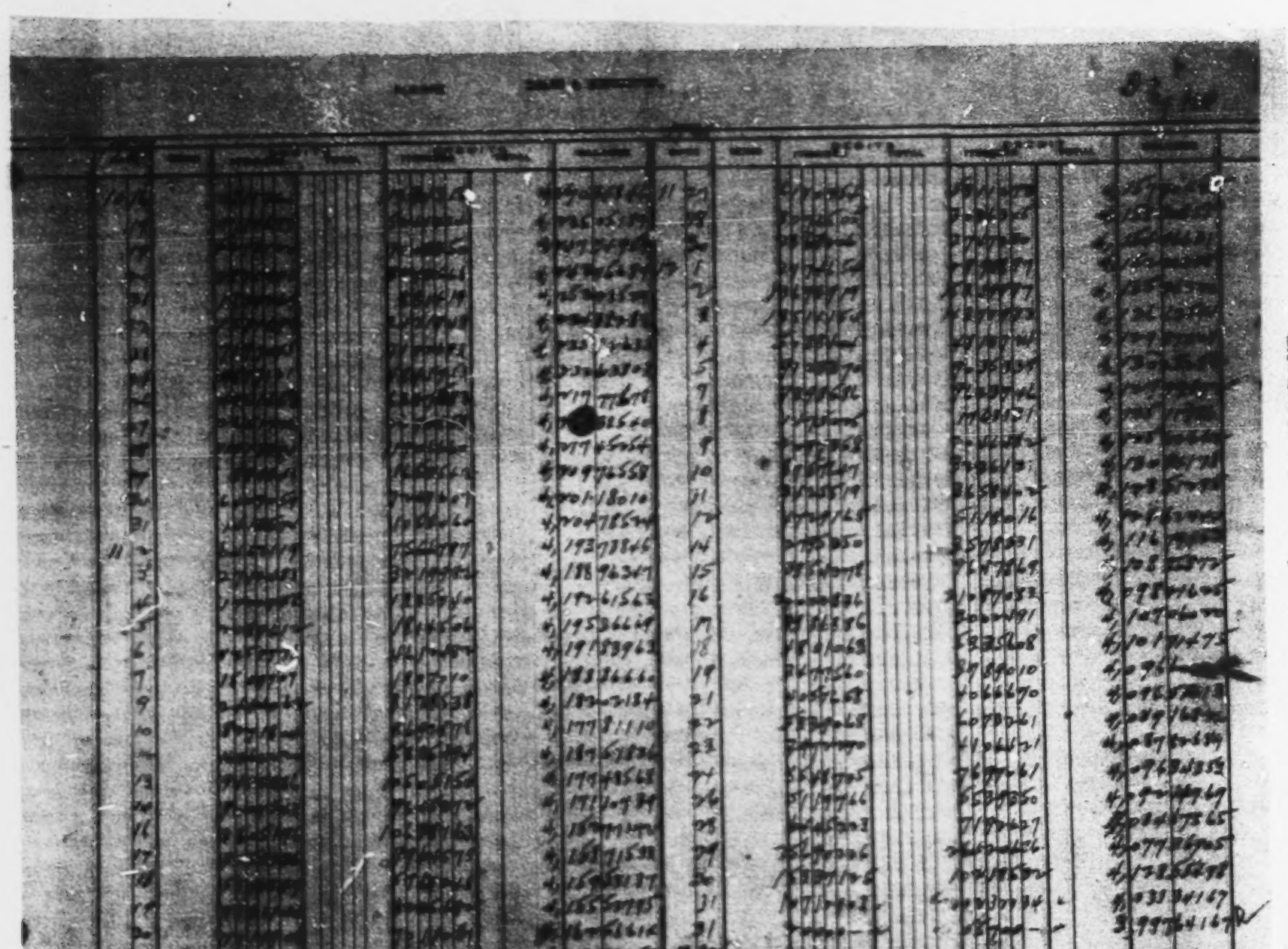
315

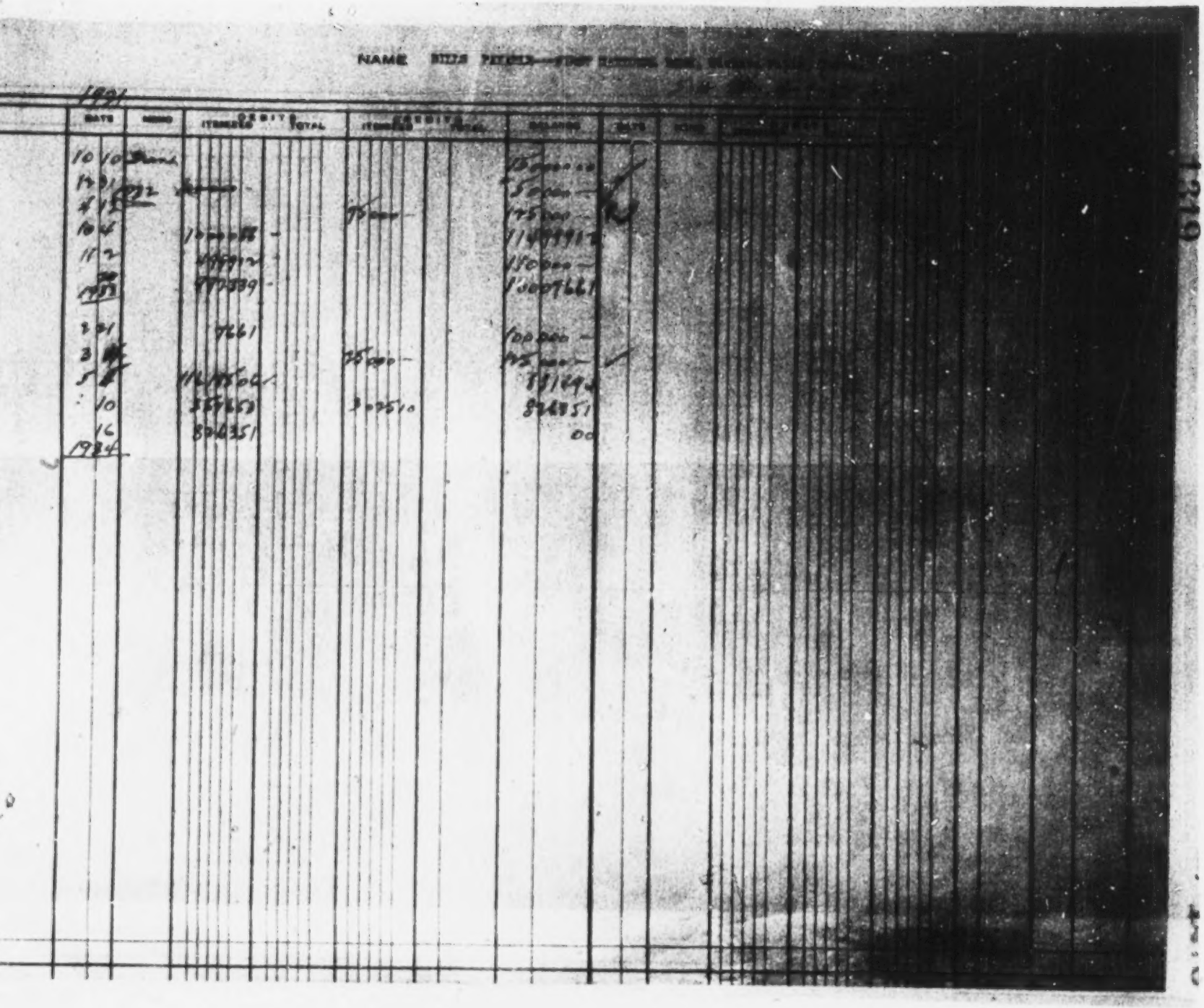
DEFENDANT'S EXHIBIT 156

3:09-CV-213

LIABILITY LEDGER

D.T.159 con





1521 The Witness:

In this transaction the loans and discounts went down and the bills payable went up, the bank did not get any cash—it showed we owed $100,000.00 less on notes payable. The loans and discounts kept gradually declining, they did not go up any. That transaction was not washed out at that time, I would not think, by looking at the loan and discount sheets of the general ledger.

Re-Direct Examination.

By Mr. Humphrey:

Referring to the liability ledger of the First National Bank on December 29, 1931, the City National Bank owed the First National Bank $150,000.00, on December 31, 1931 that was reduced to $50,000.00; the liability on that date showed that J. T. Harrell and others owed the First National Bank $100,000.00.

The two notes of $50,000.00 each which you now hand me, dated December 29, 1931, signed by C. H. Clark, J. T. Harrell, Oral Jones, F. P. Timberlake, W. L. Robertson, Frank Keel, J. Anderson Kemp, N. H. Martin, J. L. McMahon, C. E. Basham, Leslie Humphrey, C. W. Snider, R. O. Harvey, A. H. Brittain, J. J. Perkins and L. H. Cullen, payable to the First National Bank, are the two notes that went into the assets of the First National Bank on that day, the proceeds of which represent the credits on the notes owing by the City National Bank to the First National Bank on that day.

Mr. Humphrey:

We offer the two notes in evidence and ask that they be photostated, Plaintiff's Exhibit 197.

1524 The Witness:

Those men who signed those two notes were either directors or closely identified with the City National Bank of Wichita Falls. By virtue of that transaction, $100,000.00 of the debt of the City National Bank to the First National Bank was reduced or paid. The corresponding entry on the books of the City National Bank in respect to that item, is bills payable to the First National Bank of Wichita Falls, reduced by $100,000.00 on December 31, 1931. Also that is reflected on the loans and discount sheets of the general ledger, shows a reduction of over $100,000.00 in notes on that day, to be exact $130,913.31 was the total amount. The journal sheet shows a reduction of $30,823.09, that is the ordinary payment and handling of the day's notes an ordinary day's business. Taking that thirty some odd thousand dollars from the hundred and some odd thousand dollars leaves $100,090.22. We charged the $90.22 to interest repaid.

Mr. Humphrey:

I offer this instrument in evidence, and ask that it be photostated, PLAINTIFF'S EXHIBIT 198.

Debit Advice: Int rebated We charge your account to cover items listed below: Ref on b/p a/c our note 90.22 Dec. 31, 1931 City National Bank Wichita Falls, Texas RCB.

1525 The Witness:

There is no way that I can identify the $100,000.00 note from the books and records of the bank, that was set aside by virtue of that transaction, I made no individual record of it; all it shows in the general ledger of the bank is that notes of $100,000.00 went off, and it is not shown any collection of those notes. Those notes were just pulled and set aside for the benefit of the directors, by the signors of the notes—not the directors; I can explain how that was handled in this way; we

went through and picked out the notes, they were to take out, and then they would go to the ledger and then take out the corresponding sheet to that note, segregate it, and these sheets and these notes were just set out and the total was run on it, and it was charged to the general books, and those sheets, ledger sheets, and the notes were taken out of the department, and did not come into the bank until his $100,000.00 note had been paid.

I do not have the charter of the bank, but I can get it for you.

Mr. Humphrey:

We offer the charter in evidence.

1526 Re-cross Examination.

By Mr. Rogers:

As to the credits shown by Defendant's Exhibit 159—every time a note that they had, for instance, I have your note in there and it was for $1,000.00 and you paid $200.00 on it, that was under the repurchase agreement of the First National Bank, and we would take your $200.00 and we would in turn give it to the First National Bank and they would give our account credit for it on our repurchase agreement. The collections were made in the City National Bank, and I imagine they would clear a slip on it. We would send them a debit slip, then they would clear it, that would be my idea. We would not write a draft for it, because we would send them a debit slip and they would clear it on us, and we would pay it when it came over, it would run through the clearing house.

Mr. Humphrey:

We offer in evidence the certificate of the incorporation of the City National Bank of Wichita Falls.

Vol. III

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1938

No. 314

WICHITA ROYALTY COMPANY ET AL.,
PETITIONERS,

vs.

CITY NATIONAL BANK OF WICHITA FALLS ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED AUGUST 30, 1938.

CERTIORARI GRANTED OCTOBER 17, 1938.

PLAINTIFF'S EXHIBIT 199.

No. 13665.

Treasury Department.

Office of Comptroller of The Currency.

Washington, D. C. March 15, 1933.

Whereas, by satisfactory evidence presented to the undersigned, it has been made to appear that "City National Bank In Wichita Falls" in the City of Wichita Falls in the County of Wichita and State of
1527 Texas has complied with all the provisions of the Statutes of the United States, required to be complied with before an association shall be authorized to commence the business of Banking;

Now, Therefore, I, F. G. Awalt, Acting comptroller of the Currency, do hereby certify that "City National Bank in Wichita Falls" in the City of Wichita Falls, in the County of Wichita and state of Texas is authorized to commence the business of Banking as provided in Section Fifty one hundred and sixty nine of the Revised Statutes of the United States.

In Testimony Whereof witness my hand and seal of office this Fifteenth day of March, 1933.

(Signed) F. G. AWALT,

(Seal) Acting Comptroller of the Currency.

The Witness:

There has been offered in evidence a contract between the City National Bank in Wichita Falls and the City National Bank of Wichita Falls, for certain assets of the old bank transferred to the new bank, and certain deposits liabilities were assumed by the new bank—I am familiar

with that transaction; that transaction had the approval of the United States Department of Banking, the Treasury Department. Plaintiff's Exhibit 199 is the charter certificate of incorporation, which has been offered in evidence.

1528 E. A. DEATON, a witness for the plaintiff, being first duly sworn, examined in chief by Mr. Humphrey, testified as follows:

My name is E. A. Deaton. I am liquidating agent of what is commonly known as the old bank, City National Bank of Wichita Falls, and have been since January, 1935. I succeeded C. E. Basham. During my term I have been endeavoring to orderly liquidate the affairs of the City National Bank of Wichita Falls. Prior to that time I worked under Mr. Basham during his ten years in office. I handled many of the matters pertaining to the liquidation of the City National Bank of Wichita Falls, prior to Mr. Basham's resignation as liquidating agent. I was an employee of the City National Bank at the time it went into voluntary liquidation, I was a sort of a trouble shooter, looking after real estate and some outside work, collections, etc. I have lived in Wichita Falls nineteen years.

I took this deposit slip, of George Peckham's January 17, 1923, Wichita Royalty Company, $1,000.00, interest $40.00. I have no independent recollection of this particular deposit slip, all I know is the recitals on the instruments. It indicates the payment of the note by the Wichita Royalty Company, of $1,000.00 with interest, $40.00, proceeds of which were placed to the credit of George W. Peckham. I have another deposit slip here,
1529 it shows Wichita Royalty Company, payment of $1,000.00 with interest of $46.66, which went to the credit of George W. Peckham. I took that also and gave Mr. Peckham credit for these respective

amounts on the deposit slip of January 17, 1923, and January 21, 1923. I was a teller at that time.

Mr. Humphrey:

We offer the two deposit slips in evidence marked "Plaintiff's Exhibits 200 and 201" as follows:

PLAINTIFF'S EXHIBIT 200.

Deposited with City National Bank of Commerce, Wichita Falls, Tex by Geo W. Peckham Jan 17, 1923 checks as follows:

Wichita Royalty Co. Note		1,000.00
Int		40.00
"17"		
Per D	Total	1,040.00

PLAINTIFF'S EXHIBIT 201.

Deposited with City National Bank of Commerce, Wichita Falls, Tex by Geo W. Peckham 2/21 1923 checks as follows:

Wichita Roy Co.		$1,000.00
Int		46.66
"17"		
Per D	Total	$1,046.66

1530 The Witness:

I knew George Peckham during his lifetime. I think his reputation for honor and integrity at the time of his death was good. At the time I took these deposit slips I did not know, or have any suspicion that George Peckham was wrongfully diverting or misusing the funds of the Wichita Royalty Company.

As liquidating agent of the City National Bank, I have a statement of the ledger liabilities of the City National Bank of Wichita Falls, February 18, 1937, which shows that the City National Bank of Wichita Falls owed $184,000.00 to the City National Bank in Wichita Falls, on what is known as the Deficiency note. And another item of $2,744.36, which is only a contingent liability; being a contingent liability on some notes that were sold with the repurchase agreement or guarantee by the bank. The $2,744.30 is a ledger liability and a corresponding asset and liability. Except for those two items, the books and records of the City National Bank do not show any other liability, except to the stockholders. I know of other claimed liabilities not carried on the books, one of which is the Zenith Oil Company claim for damages that are pending in Court, and this claim of the Wichita Royalty Company. Aside from its contingent liabilities and the ledger liabilities, I do not know of any other claim against the City National Bank of Wichita Falls. This is a daily financial sheet which shows the balance, it is a take off of the ledger balance sheet.

Mr. Humphrey:

We offer it in evidence, Plaintiff's Ex. 202.

P.E. #202

CITY NATIONAL BANK

of WICHITA FALLS, TEXAS

DAILY FINANCIAL STATEMENT

DATE FEB 19 1937

DUE FROM BANKS		**DEPOSITS**	
Federal Reserve Bank Dallas		Individual	
BANKERS & TRUST CO.'S		Due U. S. Govt.—2c Tax	
Amarillo National Amarillo		Demand Certs. of	
Cont. Ill. Nat.Bk.&Tr.Co. Chicago		War Loan Deposit	
First Natl. in Dallas Dallas		Cashier's Checks	
Mercantile National Dallas		Cert. Checks & Letters of Cr.	
Rep. Nat. Bk. & Tr. Co. Dallas		Expense Checks	
Fort Worth National Ft. Worth		Dividend Checks Outstanding	
City National Galveston		Banks, Bankers & Trust Co.'s	
First National Henrietta		Due Federal Reserve, Dallas	
City National Houston		Transit Account	
Union National Kansas City		City Bank Overdrafts	
Citizens National Lubbock		**TOTAL DEMAND DEPOSITS**	
National City New York		Time Certs. of	
Liberty National Okla. City		Savings Accounts	
First National St. Louis		Postal Savings	
National Bank of Tulsa Tulsa		Time—Open Account	
		Personal Savings	
		TOTAL TIME DEPOSITS	
		TOTAL DEPOSITS	
		CAPITAL STOCK	1,000000 00
CASH--DUE FROM BANK,	1,78997	**SURPLUS**	
		UNDIVIDED PROFITS	
TRANSIT ITEMS		Reserved for Taxes, Accrued	
Transit Account		Reserved for Interest, Accrued	
P. M. Clearings		Re-Discounts Federal Reserve	
Country Bank Overdrafts		Bills Payable	184,000 00
Other Cash Items		Customers' Bonds	
CASH IN VAULTS		Travelers Checks	
		Other Liabilities	2,744 36
		TOTAL LIABILITIES	1,186,744 36
TOTAL CASH & EXCHANGE		**GROSS EARNINGS:**	
		Interest and Discount	4,549 82
SECONDARY RESERVES		Exchange	
U. S. Government Securities		Other Earnings	609 49
Bonds—Secure Postal Savings		Recoveries on Charged-off Assets	815 53
Bond Premium and Interest			5,974 84
Other Bonds, Stocks & Securities	1 00	**EXPENSES PAID:**	
Claims, Warrants, Etc.		Salaries and Wages	300 00
		Int. & Dis. on Borrowed Money	
		Interest on Deposits	
LOANS AND DISCOUNTS		Taxes	2,411 52
Bills Receivable	451,598 71	Other Expenses	386 34
Personal Loans			3,097 86
Trade Acceptances		**LOSSES CHARGED OFF:**	
		Loans and Discounts	4,207 84
INVESTMENTS		Other Losses	
Federal Reserve Bank Stock			4,207 84
Bank Building			7,305 70
Furniture and Fixtures		**NET to UNDIVIDED PROFITS**	1,330 86
Other Real Estate	110,882 60		
Royalties—Leases		Yesterday's Deposits	
Other Assets	6,401 89	Loss-Gain	
Customer's Bonds		Today's Deposits	
Travelers Checks			
DEFICIT - U/P	616,070 43	Reserve Required	
TOTAL RESOURCES	1,186,744 36	Excess-Deficiency	

1329

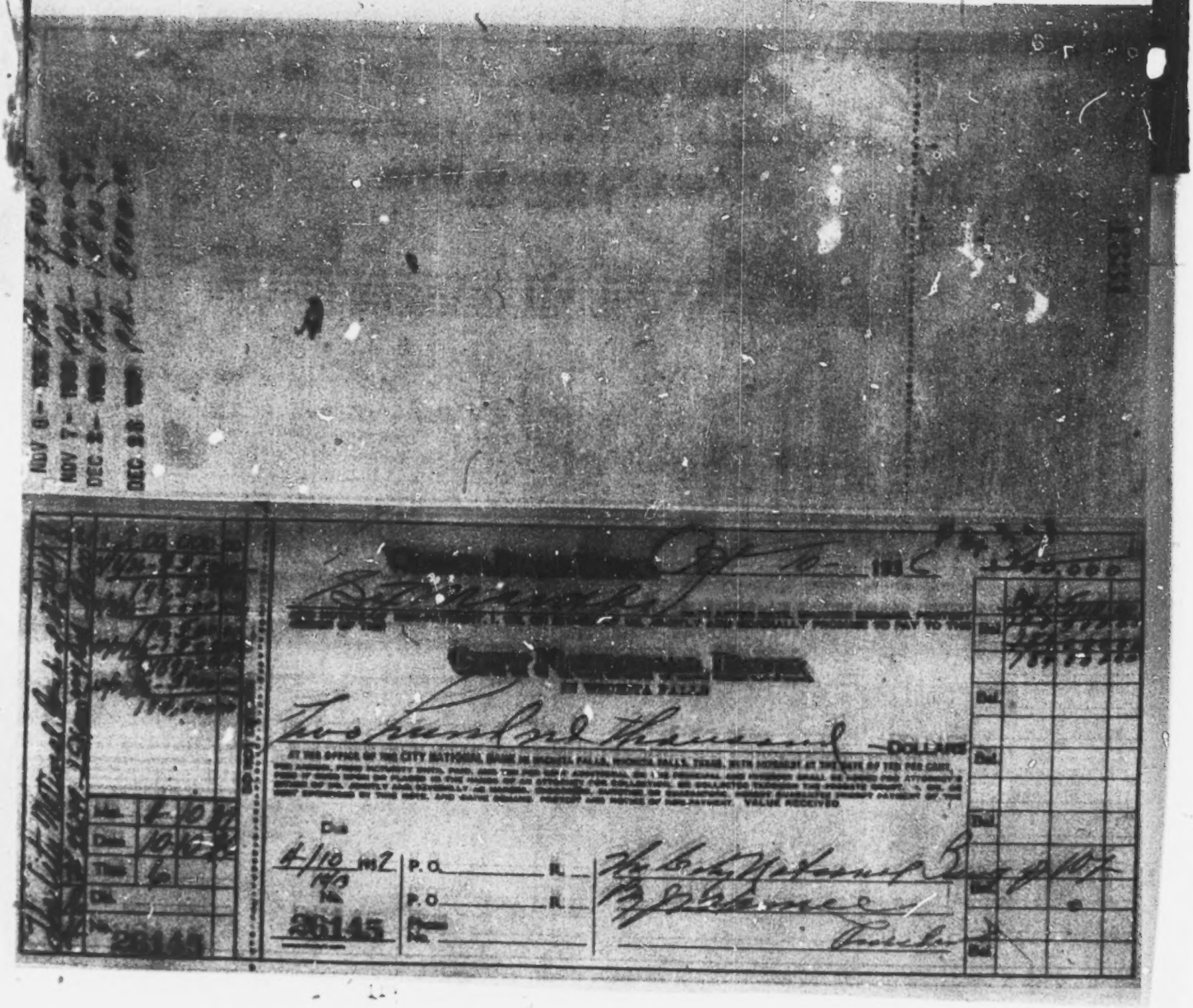
1532 The Witness:

Of course, it shows the book value of the assets. The instrument which you hand me, dated October 10, 1936, signed by the City National Bank and payable to the City National Bank in Wichita Falls, is the deficiency note, in the amount due and unpaid to the extent of $184,000.00.

Mr. Humphrey:

We offer this note in evidence, and ask that it be photostated.

(Marked "Plaintiff's Exhibit 203" as follows:)



NOV 6 - 1933 PA - 3500.00
NOV 7 - 1933 PA - 6000.00
DEC 2 - 1933 PA - 1500.00
DEC 28 1933 PA - 5000.00

1331

[illegible] Oct 10 1932

[illegible]

[illegible] PROTEST [illegible] AFTER DATE, [illegible] PROTEST [illegible] AND SEVERALLY PROMISE TO PAY TO THE [illegible]

CITY NATIONAL BANK
IN WICHITA FALLS

Two hundred thousand DOLLARS

AT THE OFFICE OF THE CITY NATIONAL BANK IN WICHITA FALLS, WICHITA FALLS, TEXAS, WITH INTEREST AT THE RATE OF TEN PER CENT, [illegible] VALUE RECEIVED.

Due 4/10 1932 10/3

No. 26145

P.O. _____ R. _____

P.O. _____ R. _____

Phone No. _____

[illegible] City National Bank [illegible]

[illegible] Pres.

Bal. [illegible]

Bal. [illegible]

Bal. [illegible]

Bal. [illegible]

Bal. [illegible]

Bal. [illegible]

Mat. 4 10 [illegible]
Date 10 16 [illegible]
Time 6
Dis.
No. 26145

The Witness:

That note is secured by the pledge of the entire assets, and deed to the real estate, of the City National Bank. I have a list of the assets of the City National Bank of Wichita Falls, this is a statement taken from the books of the bank. I have placed no value on the two hundred lots in the Marlborough Addition in making up this statement. While I have recited approximately two hundred lots, as a matter of fact those are carried in the form of stock ownership in the Texas Investment Company, which company holds the legal title to the lots, and the bank owns the stock.

Mr. Humphrey:

We offer the statement in evidence.

PLAINTIFF'S EXHIBIT 204.

Assets.

The City National Bank of Wichita Falls,
February 18, 1937.

Cash in Bank	$1,789.93
Loans and Discounts (List attached)	451,598.71
Stock—100 sh. Bowers Oil Co.	1.00
2/384th Royalty interest—155 acres Gray Co., Texas	3,657.33
Real Estate (list attached)	110,882.60
	$567,929.57

Also approximately 200 lots in Marlborough Addition.

1535 Loan and Discounts

The City National Bank of Wichita Falls,
February 18, 1937.

Name—	
Alexander, Geo. A., Jr.	$2,788.86
Aulsbrook, C. J.	98.50
Baber, J. M.	8,500.00
Basham, C. E.	14,034.78
Britain, A. H.	2,000.00
Brown, Henry	8,726.35
Burnett, I. E.	1,904.57
Bynum, E. B.	387.00
Carson, H. H.	100.00
Cearley, B. W.	193.96
Chafin, E. V.	97.50
City Nat'l Co. of W. F.	107,160.00
Clark, S. H.	359.59
Cochran, E. B.	188.20
Cone, W. M.	324.48
Cooke, M. M.	418.35
Davis, A. L.	19.00
Dickey, L. H.	441.48
Evans, L. A.	14,278.62
Ferrell, Wilson	78.95
Floyd, W. E.	507.35
G. I. Oil Company	3,101.74
Gates Hereford Farms	604.00
1536 Geyer, Harry	24.00
Cholson, J. M.	4,609.09
Grantham, Cleo W.	43.15
Green, W. J.	6,500.00
Grisham, W. J.	5 500.00
H. & H. Fuel Oil Co.	348.82
Hampton, Jno. W.	1,536.00
Harding, E. P.	1,451.45
Harris, Theodore	250.00

Hines, Harry		547.00
Hoffman, F. J.		1,600.00
Holcomb, W. W.		91.30
Huffines, W. C.		50.00
Jensen, Walter		102.50
Kellow, S. R.		65.20
Kemp, J. A. Estate		117,699.07
Kertz, L.		1,961.43
King, Roy H.		1,396.35
Kovarik, Jan		357.97
Lee, J. F.		92.65
Logan, R. A.		10.00
Marshall, N. H.		155.85
Mask, B. B.		143.50
	McCulloch, R. W. H.	337.10
1537	McKenzie, T. F.	7,525.10
	Miller Drug Store	945.00
Miller, W. E.		32.75
Moss, T. J.		1,245.57
Mullins, R. L.		6,424.80
Myers, C. C.		379.00
Nolen, Chas. W.		33.66
North Texas Finance Corp.		1,399.55
Norwood, G. W.		1,053.60
Paul Tex Oil Co.		1,066.78
Riveer, M. M.		146.80
Robertson, W. L.		12,576.32
Robinson, Jas. R.		4,682.96
Saye, Frank		50.00
Schambs, Edward A., Jr.		68.63
Smith, C. C. Estate		995.70
Staber, Fred		638.56
Stone, Jerome S.		32,202.38
Stone, L. T.		200.00
Texas Investment Co.		1,894.79
Thomas, Jno. W.		36,261.77
Thornberry, H. T.		3,912.20
Turner, W. F.		277.30
Wehba, Katba		100.40

	Welch and Richardson	500.00
	Wichita Royalty Co.	22,365.93
1538	Williams, Sam	122.70
	Woodall, B. B.	910.75
	Yancey, J. S.	2,400.00
	Total	$451,598.71

The Witness:
This is a list of the real estate owned by the City National Bank of Wichita Falls.

Mr. Humphrey:
We offer that statement in evidence.

(Marked "Plaintiff's Exhibit No. 205" as follows):

PLAINTIFF'S EXHIBIT 205.

Real Estate Owned by The City National Bank of Wichita Falls, February 18, 1937.

	Description	Book Value
	Outer Block #25, Burkburnett, Texas (20 acres)	$ 1.00
	320 acres unimproved land, Andrews County, Texas	1.00
	1 vacant lot—Hillcrest, Plainview, Texas	200.00
	Undiv. ¼ int. lot 3 Priddy Addition Wichita Falls	1.00
1539	50 acres Wichita Co. Former S. W. Ref. Co. site	14,771.30
	143 acres land Kit Carson Co. Colo.	3,200.00
	36 acres unimproved land on Seymour Road Wichita County, W. S. Curlee	1,020.00

Description	Book Value
1807 Elizabeth St., Wichita Falls	4,315.30
1309 Lamar St., Wichita Falls	6,511.66
10 acres unimproved land, Wichita Co., H. G. Helgerson	1,000.00
1 vacant lot, 2607 Kemp Blvd., Wichita Falls	100.00
Undiv. ¼ int. in lots 6 & 7, Block 182, Jos. Long	5,000.00
134.61 acres unimproved land Wichita Co. (Pet. Gdns.)	10,673.82
Blocks 9-10-14-15-16, S. ½ 17, S. ½ 18, and 21 (Pet. Gdns.)	6,000.00
5 acres unimproved land Tyson Sub.	500.00
1 vacant lot at 104 Oriole St., Wichita Falls	50.00
1417-24th St., Wichita Falls	1,500.00
4 vacant lots on Kentucky St., Wichita Falls	400.00
Lots 1-2-3-4 Block 90 Wichita Falls (H. M. Harrison)	1.00
6986 acres land Dallan County, Texas	50,154.00
Undiv. ½ int. 160 acres land, Archer County (Otto Stehlik)	3,750.00
80 acres Pub. Sch. land, Hudspeth County, Texas	1.00
94.9 acres unimproved land Wichita Co. (Fritz Hendrick)	1.00
640 acres grass land Curry Co. N. Mexico	2,000.00
Total	$111,152.08
Less 1/10 int. in 200 acres of the Hartman tract, Wichita Co., Texas	269.48
Credit Balance	$110,882.60

1540 The Witness:

I am not undertaking to testify as to the actual value of this property, except as to the book value. I have been handling the real estate, and it is of a substantial value. These two hundred lots in the Marlborough Addition are properties adjacent to the Country Club Ad-

dition. There has been no market sale value of those lots. Up until the filing of the suit, I have been endeavoring to collect these notes in an orderly way. The instrument which you now hand me is a certified copy of the notice les pendens of this suit, and I could not sell the lots on account of this instrument.

Mr. Humphrey:

We offer in evidence the notice les pendens of this suit filed for record in Wichita County on June 19, 1936, at 4:25 P. M.

(Marked "Plaintiff's Exhibit No. 206" as follows:)

PLAINTIFF'S EXHIBIT 206.

Wichita Royalty Co. et al vs. Lis Pendens Notice City Natl Bank et al.

State of Texas,
County of Wichita.

Notice is hereby given that in a suit pending in the 30th District Court of Wichita County, Texas and numbered 24549-A, Wichita Royalty Company and E. E. Scannell its Trustee, filed on June 18, 1936, a third amended original answer, cross-action and interpleader against The City National Bank in Wichita Falls, Texas; J. T. Harrell, individually and as Trustee for The City National Bank of Wichita Falls, Texas, W. H. Peckham as Administrator of the Estate of G. W. Peckham, Deceased; William Peckham and George Peckham; Robert Peckham; Mrs. Hazel D. Peckham; Texas Investment Company, E. A. Deaton; L. H. Cullum; Le lie Humphrey, Tarlton Morrow, Jack Jeffus, Oral Jones; Frank Kell, Joe Kell; J. J. Perkins, C. W. Snider; F. P. Timberlake; The Humble Oil & Refining Company; The Texas

1541

Company; and The Continental Oil Company, wherein Wichita Royalty Company seeks the recovery of $200,000.00 (Two Hundred Thousand Dollars). Interest and costs against the several parties as their liabilities appear, and wherein it is alleged that The City National Bank of Wichita Falls, Texas was insolvent and in contemplation of continued insolvency long prior to March 1, 1933, and that thereupon its assets became a trust fund for the benefit of creditors to ratably distribute the same, and to make no preferences therefrom, but that numerous creditors had been preferred by payment through the action of the members of the Board of Directors of said bank to the prejudice of Wichita Royalty Company and with the further allegation that among the assets of The City National Bank of Wichita Falls, Texas, is all of the property standing in the name of Texas Investment Company, a. that all of the assets both real and personal,
belonging to The City National Bank of Wichita
1542 Falls, Texas, at the time of its insolvency and at the time it became in contemplation of insolvency where and are charged with an equitable lien for the benefit of all creditors, and that all transfers or conveyances thereof, and all liens sought to be created on any part of such assets are absolutely void, and that the parties and corporations to whom such a portion of such assets where transferred and to whom liens thereon were given knew of the insolvency of said bank, and they have held and now hold all of such asset that are still in their possession in trust for Wichita Royalty Company and other creditors; and as security for the $200,000.00 and interest thereon sued for Wichita Royalty Company claims a lien upon all properties standing in the name of Texas Investment Company and standing in the name of The City National Bank of Wichita Falls, Texas, as of the date of its contemplated insolvency as well as upon the assets that may have been assigned or conveyed by said bank thereafter; and prayer is made in said suit that said debt be recovered, said lien enforced, said trust fund restored, and said assets preserved for ratable distribution among the creditors

of said bank, and for other relief as from said amended pleading is manifest.

KILGORE & ROGERS,
By RAY BLAND,
Attorneys for Wichita Royalty Company.

Filed for Record June 19, 1936 at 4:25 P. M.

Recorded June 19, 1936 at 4:35 P. M.
JULIAN McFALL,
Clerk County Court, Wichita County, Texas.
1543 By JACK CONNELL,
Deputy.

Which copy is duly certified to by the clerk of the County Court of Wichita County, on June 27, 1936.

The Witness:

All of these town lots are located in Wichita County, Texas, and I think there is some market for the lots of the Marlborough Addition now except for this lis pendens which has prevented us from making a merchantable title to any of the real estate.

Cross Examination.

By Mr. Rogers:

Some of the directors of the old bank became directors of the new bank in March, 1933, I will furnish the examiner a list of such directors.

Plaintiff's Exhibits 200 and 201, those notations, the one dated January 17, note $1,000.00 and interest, $40.00. In other words, the Wichita Royalty Company borrowed that amount of money on each of those dates, and the proceeds went to the credit of G. W. Peckham. I have no independent recollection of those transactions, but I would say that those were notes executed by George

Peckham to the Wichita Royalty Company, which had been left with the collection Department of the City National Bank for collection.

The note offered in evidence is a renewal of the pre-existing note—I have before me a sheet of the City National Bank of Wichita Falls and the City National Bank in Wichita Falls, that reflect the transactions on the $184,-
000.00 note. There is no other liability between
1544 the two banks, nor has there been since March, 1933, than as reflected on that record. This is the liability between the two banks.

Mr. Rogers:

We offer that in evidence and ask that it be photostated, Defendant's Exhibit 162.

THE CITY NATIONAL BANK

WICHITA FALLS, TEXAS

SHEET NO. 3

0 & N

SECURITY LIABILITY LEDGER

NAME THE CITY NATIONAL BANK OF WICHITA FALLS,

ADDRESS U. S. T. DIVISION.

ACCOUNT	AMOUNT	RATE	MATURITY DATE	DESCRIPTION OF SECURITY	DR CR	PURCHASE DATE	MATURITY DATE	DAYS	INTEREST AMOUNT	ACTUAL
				1954 TRANS FROM OLD BANK						
				DEFICIENCY & NOTE TO ADJUST ACTUAL NOTES AS OF						
				1954 AS CREDIT SLIP TO FEDERAL RESERVE BANK						
				DEC NOTE 2.54 INT ON 30,000.			SOLD INT.			
				A SALE NOTE FOR INT	H		APR 26 54 28 S			
				PYT 19708 CK ON US 2,000.00						
				PYT 19708 CK ON US 1,500.00						
				PYT 19708 CHARGE SLIP 700.00						
				PYT 19708 CHARGE SLIP 6,200.00						
				PYT 19708 CHARGE SLIP 2,500.00						
				PYT 19708 CHARGE SLIP 2,450.00						
				PYT 19708 CHARGE SLIP 3,800.00						
				PYT 19708 CHARGE SLIP 985.00						
				A SALE NOTE FOR INT 2,250.00	H		OCT 26 54 3 S			
				PYT 19720 CHARGE SLIP 1,610.00						
				PYT 19720 CHARGE SLIP 2,400.00						
				PYT 19720 CHARGE SLIP 2,500.00						
				A SALE NOTE FOR INT	H		MAY 19 55 A S			
				PYT 19720 CK ON US 2,000.00						
				A SALE NOTE FOR INT 15,000.00	H		NOV 8 55 5 S			
				PYT 19720 CK ON US 1,500.00						
				PYT 19720 CHARGE SLIP 10,000.00						
				PYT NO. 19720 CK ON US 1,500.00						
				PYT NO. 19720 CK ON US 1,000.00						
				PYT NO. 19720 CHARGE SLIP						
				PYT 19708 CK ON US 1,500.00						
				A 19708 CK ON US 1500.00	H		MAY 8 56 6 S			
				PYT 19708 CK ON US 1,000.00						
				PYT NO. 19708 CK ON US 1500.00						
				PYT 19708 CK ON US 20,000.00						
				PYT 19708 CODE SLIP 15,000.00						
				A 19708	H		NOV 9 56 7 S			
				PYT 25299 CK ON US 50,000.00						
				PYT 25299 CK ON US 50,000.00						
				A 25299 & DEP 40,000.00	H		APR 10 57 8 S			
				PYT 26145 CK ON US 3500.00						
				PYT 26145 CK ON US 6,000.00						
				PYT 26145 CK ON US 1500.00						
				PYT 26145 CK ON US 5,000.00						

1546 The Witness:

On Plaintiff's Exhibit 204 is listed a substantial book value of bills receivable. I would not say any of those had been charged off of the books of the old bank before March, 1933—as far as I know, all of those notes were assets of the old bank in March, 1933. Included there is the Kemp estate obligation of over one hundred thousand dollars. The City National Bank of Wichita Falls is a corporation of some seven hundred and some odd thousand dollars, my impression is that it is an investment company that is organized by some of the stockholders of the City National Bank of Wichita Falls, to deal in mortgage loans and real estate notes. I have been able to make some collections on that obligation since I have been trying to liquidate these assets, I would estimate $35,000.00 or $40,000.00. That is a secured note. I have tried to collect all I could and as fast as I could on all of those obligations. I do not know that the J. A. Kemp note is worth anything.

On Plaintiff's Exhibit 205, I have not put down the values shown upon the books to have been the amount that the bank was out for the acquisition of those properties, some of them have a nominal value of $100. I have not been able to sell any of that land. The note charged against the Texas Investment Company is a note for advances made for taxes or some similar item.

We are suing the Wichita Royalty Company for $14,000.00 on a Texas Investment Company note, being one-half of a $28,000.00 deficiency which Mr. Harrell testi-

1547 fied he is liable on—I have not tried to collect that from anybody except the Wichita Royalty Company. I do not know that Mr. Harrell has testified he is liable on that note. I will try and liquidate the bank and get all the money I can to satisfy its customers. I could not say that I knew Mr. J. T. Harrell owed this old bank on the Texas Investment Company indorsement a deficiency of between its face value for $43,000.00 plus a credit of $20,000.00 and has owed it for many years, I have nothing charged on the books

against him further than his indorsement of that note. I have not filed suit against Mr. Harrell. I have not taken a renewal note from Mr. Harrell to keep the statute of limitation from running in his favor. I am the only employee of the old bank. Mr. Harrell has not received any compensation for acting as trustee of the old bank, he is still a trustee of its assets. So far as I know, Mr. Harrell is solvent. I would not be willing to say that I know the reasonable cash market value of those assets, in the aggregate.

Re-Direct Examination.

By Mr. Humphrey:

As a matter of fact, we have collected hundreds of thousands of dollars as assets of the old bank since it has been liquidated. We owed a big note to the Reconstruction Finance Corporation, and we paid that off. It is my recollection that the new bank assumed the Federal Reserve Bank note. We could continue to make progress during the liquidation of the old bank if it were not for the tying up of the assets in this lawsuit. I do not undertake to tell how many
1548 of these notes are collectable. The note of H. H. Carson is a well secured note, as are many others. I see here listed twenty acres out of block 35, Burkburnett, at $1.00, which is worth substantially more. Also 320 acres unimproved land in Andrews county in the neighborhood of oil development, it is listed at $1.00 and is worth substantially more; also fifty acres adjacent to the City of Wichita Falls, at $1.00, a refinery site and is worth substantially more. I do not mean to say that these lands could not have been sold, but I meant to say that we had not been able to get what we thought we should, under the present conditions. Here is a tract of six thousand, nine hundred and eighty-six acres of land in Dallam County, which is fine plains land. Also ninety-four acres of unimproved land in Wichita County, listed at $1.00, which is worth two or three thousand dollars.

The financial statement which you now hand me, of the old bank, March 20, 1933, shows that we had debts, exclusive of the stockholders liability, for capital stock of $793,000.00; liabilities something over $803,000.00, and we have liquidated it down to $184,000.00.

Re-Direct Examination.

By Mr. Morrow:

These notes that are listed here on Exhibit 204, do not purport to show the charged off paper. When I said I had not collected on some of these items I did not mean that they had no value; I found that
1549 in the liquidation if I force collection on some of the matters that it would destroy the value, where as by waiting and indulging and giving assistance, and taking other securities, conditions have improved and we expect to collect—I think that is true of any paper in any bank.

Re-Direct Examination.

By Mr. Humphrey:

We have bills payable just after the organization of the new bank, the old bank had bills receivable of $1,215,000.00, they are now $451,000.00.

Re-Cross Examination.

By Mr. Rogers:

I have made a report to the government at the close of business December, 1936.

Mr. Rogers:

We offer it in evidence, and ask that it be photostated.

(Marked "Defendant's Exhibit 163" as follows:)

1345

CHARTER No. [illegible]

REPORT OF LIQUIDATING [illegible] of The [illegible] National Bank of [illegible]

for the Period ended December 31, 19[illegible]

[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	LIABILITIES	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	157811 [illegible]	[illegible]	[illegible]	[illegible]	1. Capital stock paid in,	[illegible]		
[illegible]	00				00	2. Surplus fund,	00		
[illegible]	00				00	3. Undivided profits,	[illegible]		
[illegible]	00				00	4. Reserved for taxes, etc.,	00		
[illegible]	[illegible]	[illegible]	[illegible]		[illegible]	5. Due to Federal Reserve bank,	00		
[illegible]	00				00	6. Due to national banks,	00		
[illegible]	00				00	7. Due to State banks and bankers,	00		
[illegible]	[illegible]	[illegible]	[illegible]	2000 00	[illegible]	8. Individual deposits,	00		
[illegible]	00					9. Savings deposits,	00		
[illegible]	[illegible]	[illegible]			[illegible]	10. Cashiers' and certified checks,	00		
[illegible]	00				00	11. Certificates of deposit,	00		
[illegible]	00				00	12. U. S. deposits,	00		
[illegible]	00				00	13. Postal savings deposits,	00		
[illegible]	00				00	14. Rediscounts with Federal Reserve bank,	00		
[illegible]		18953 [illegible]				15. Rediscounts and bills payable,	[illegible] 000 00	[illegible]000 00	
[illegible]		2732 90				16. Liabilities other than those above stated,	2 746 [illegible]		
[illegible]		17846 [illegible]							
[illegible]	00	[illegible]			00				
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	Totals,	[illegible]	[illegible]	[illegible]

Total liquidating dividends paid to date, $ ..... percent.

RECEIPTS AND DISBURSEMENTS FOR PERIOD ENDED DECEMBER 31, 19[illegible]

RECEIPTS			DISBURSEMENTS		
1. Cash on hand at beginning of period,		00	1. Paid depositors,		00
[illegible]	157 811	[illegible]	2. Paid to Taxes	1 [illegible]	[illegible]
[illegible]	[illegible]	[illegible]	3. Paid to Expenses	11 [illegible]	[illegible]
[illegible]	[illegible]	[illegible]	4. Paid to Rediscounts & Bills Payable	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	5. Paid [illegible]		[illegible]
[illegible]	[illegible]	[illegible]	Paid on [illegible] assets	108 [illegible]	[illegible]
[illegible]	[illegible]	[illegible]	Dividend on capital stock, [illegible]		
[illegible]	[illegible]	[illegible]	Dividend on capital stock, [illegible]		
[illegible]	[illegible]	[illegible]	6. Cash on hand at end of period,		00
Total,	[illegible]	[illegible]	Total,	203 335	72

IMPORTANT

The Banking Act of 19[illegible] [illegible] of law for the [illegible] annual reports to the Comptroller [illegible] of each year, showing [illegible]

I hereby certify the above report to be correct.

Seal of Notary

1551 P. H. LAMBERT, a witness for the plaintiff, being first duly sworn, examined in chief by Mr. Humphrey, testified as follows:

My name is P. H. Lambert, commonly called "Pat". I am a Certified Public Accountant, have been granted a certificate to practice accountancy before the Board in the State of Texas. I have been such accountant since May, 1926, and have been engaged in public accounting constantly during eleven years. I have been working as an accountant for fifteen years. I was employed by the City National Bank to make an audit and investigation of the matters involved in this lawsuit, I was so employed in October, 1936. I have spent approximately seventy-five working days on that matter. It involved a detailed examination of all of Mr. Peckham's deposit slips, covering the deposits to his account in the City National Bank and such deposit slips as covered the deposits in other banks which we could find, to try to ascertain from where the money came that he deposited to his credit in these various banks; then it involves a detailed examination of all of his checks, all of the checks that were issued against his bank account with the City National Bank, and such other checks as we could find from the accounts that he carried with other banks; it covered a period beginning January 1, 1923, and closing with his death in 1929, that is as far as the personal receipts and disbursements were concerned. Then we examined his account, that is, his liability account with the City National Bank in detail. Moneys borrowed from the bank,
1552 and moneys paid to the bank, together with the interest charges, and at the same time making a detailed examination of his current daily checking account with the bank, trying to determine what moneys were applied by Peckham to pay his personal obligation to the bank. Then in addition to that, Mr. Carson and I have made several trips to the various counties, running the county records, trying to find some trace of the properties which Mr. Peckham bought

in various counties, in this area, and all the properties which he bought and transferred to the Royalty Company, all property which he owned an interest in and which was carried in some one else's name, the properties which he bought for the Royalty Company were carried in another name, in fact, we ran the records to find anything that Mr. Peckham had anything to do with. In addition to that, we made an investigation of the books and records of the Wichita Royalty Company, their vouchers and checks were not available for inspection. However, I had a copy of them, that is, a typewritten copy. The checks themselves were available, however, I did not ask for them myself. I did have their ledgers or photostatic copies of their general ledger for examination, and part of their cash books for examination. I have made my audits from the various records as outlined. I have also read the pleadings in this lawsuit, and know the allegations contained therein. I made an investigation of each of the transfers made by Peckham from the account of the Wichita Royalty Company to his individual account during this period of
1553 time, the source of deposits to G. W. Peckham's account from January 1, 1923 to November 6, 1929. I have prepared here a report which includes the payments made by G. W. Peckham for the purchase of properties to the account of Wichita Royalty Company or for the payment of the Wichita Royalty Company's liability for borrowed money; and there is also included herein all checks which show that the City National Bank or other bank as payee, which were deposited in said Peckham's personal account, except it does not include the monthly salary and expense items paid to G. W. Peckham.

Mr. Humphrey:

At this time I would like to have the report of Mr. Lambert marked "Plaintiff's Exhibit 207," and will introduce it in the record later on.

The Witness:

I will take this report, Plaintiff's Exhibit 207, and tell you what it is.

It is a summary of funds deposited to the personal account of G. W. Peckham for the period beginning January 1, 1923, and ending with his death in November, 1929. It includes all deposits to his account, except his monthly salary and expense items paid to Peckham by the Wichita Royalty Company. And this includes all payments made to Peckham for the purchase of properties for the account of the Wichita Royalty Company and for the payments of said company's liabilities for borrowed moneys. There is also included herein all checks which show the City National Bank or any other bank as payee, and which were deposited to
1554 George Peckham's personal account. And it compares the items which Mr. Peckham deposited in his personal account from the Wichita Royalty Company, with the total items deposited in the account from all sources.

The first page, under the year 1923, it shows that seven items originating and coming from the Wichita Royalty Company were deposited to George Peckham's personal account, and these items total $9,663.33. During the same period, two hundred and one items originating from other sources were deposited to George Peckham's personal account, a total of $242,189.37. The total items deposited to George Peckham's account during the year 1923 amounted to two hundred and eight different items, and totaled $251,852.70. Of the total deposit to George Peckham's account, three percent of the items originated with the Wichita Royalty Company, and four percent of the amount deposited originated with the Wichita Royalty Company, ninety-seven percent of the items deposited to George Peckham's account during that year were personal items which did not come from the Wichita Royalty Company, and ninety-six percent of the amount of funds deposited to George Peckham's personal account during the year were personal items

which did not originate with the Wichita Royalty Company. And during the year 1924 there was deposited in Mr. Peckham's personal account, six items which originated with the Wichita Royalty Company and which totaled $38,445.00. There were deposited in his personal account during the same period, two hundred
1555 and eighty-five items which did not originate with the Wichita Royalty Company, and which were personal items totaling $392,256.53. During the entire year there was deposited two hundred and ninety-one items amounting to $430,701.53, of which total, two percent in volume, that is, in number of items, originating with the Wichita Royalty Company and nine percent of the amount came from the Wichita Royalty Company, leaving ninety-eight percent of the items as personal items not originating with the Wichita Royalty Company, and $392,256.53, or ninety-one percent being personal funds originating outside of the Wichita Royalty Company.

Now, for the year 1925, there was deposited to Mr. Peckham's personal account five items originating with the Wichita Royalty Company, totaling $20,250.00. During the same period there were deposited one hundred and ninety-six other items totaling $449,365.09, which did not originate with the Wichita Royalty Company and were personal funds, making a total for the year of 201 items amounting to $469,615.09. For the year, two percent of the items originated with the Wichita Royalty Company and only four percent of the amount. While ninety-eight percent of the items deposited in his account during that year originated from personal sources and ninety-six percent of the funds deposited in that year were personal funds which did not originate with the Wichita Royalty Company.

For the year 1926, seventeen items originating with the Wichita Royalty Company and amounting
1556 to $95,488.51, were deposited in Mr. Peckham's personal account. During the same period sixty-nine items totaling $145,930.65, and being personal funds,

not originating in any manner with the Wichita Royalty Company were deposited to Mr. Peckham's personal account, making a total for the year 1926, of eighty-six items amounting to $241,419.16. For the year 1926, twenty percent of the items deposited in Mr. Peckham's account originated with the Wichita Royalty Company, and forty percent of the amount originated with the Wichita Royalty Company, while eighty percent of the items were personal funds, from other sources, and sixty percent of the amount deposited to his account originated from sources other than the Wichita Royalty Company.

During the year 1927, nine items, totaling $14,201.82, originated from the Wichita Royalty Company and were deposited to Mr. Peckham's personal account, while sixty-eight items totaling $76,098.48 were deposited to Mr. Peckham's account and were personal funds and items from sources outside of the Wichita Royalty Company, making a total for the year of seventy-seven items amounting to $90,300.30, deposited to Mr. Peckham's account. Of this total deposit for the year 1927, twelve percent of the items originating with the Wichita Royalty Company and sixteen percent of the amount came from the Wichita Royalty Company. While during the same period eighty-eight percent of the items were personal items and eighty-four percent of the amount deposited to his account were personal funds
1557 coming from sources other than the Wichita Royalty Company.

For the year 1928, two items, amounting to $2,274.66, and having as their source the Wichita Royalty Company, were deposited to the personal account of G. W. Peckham. During the same year sixty-three items totaling $66,870.96 and being personal items not originating with the Wichita Royalty Company, were deposited to Mr. Peckham's personal account, making a total of sixty-five items amounting to $69,145.62, deposited to Mr. Peckham's personal account during the year 1928. Of these totals, three percent of the items originated with the

Wichita Royalty Company and three percent of the amount originated with the Wichita Royalty Company. While for the same period ninety-seven percent of the items and ninety-seven percent of the amount, came from sources other than the Wichita Royalty Company.

Now, during the year 1929, up to the time of Mr. Peckham's death, there were not any items deposited in Mr. Peckham's account from the Wichita Royalty Company. However, there were deposited to his account eighty-two items, totaling $130,499.73, all of which were personal funds and not originating in the Wichita Royalty Company, making a total for the entire period of forty-six items amounting to $180,323.32, deposited in Mr. Peckham's personal account and originating with the Wichita Royalty Company. And during the same period there were deposited in his personal account nine hundred and sixty-four items totaling $1,503,210.81, which
1558 were personal funds and items originating from sources other than the Wichita Royalty Company, making a total deposit of items, in amount, during the period, of one thousand and ten items, and a total of $1,683,534.13. And for the entire period five percent of the items and eleven percent of the amount deposited to Mr. Peckham's personal account originated with the Wichita Royalty Company, while ninety-five percent of the items and eighty-nine percent of the amount deposited to Mr. Peckham's personal account were personal funds originating from sources other than the Wichita Royalty Company.

The pages following the first page, as above outlined, are items by months for the entire period and supporting the data contained in the first page. It is taken from the books and records of the City National Bank and traced in connection with the books and records of the Royalty Company, and also from the bank account of G. W. Peckham and his deposit slips. On page 1356, Plaintiff's Exhibit 207, there is an item, June 19, July, 1924, that is classed as funds from the Wichita Royalty Company, $21,000.00. That amount is made up of two

items, an item of $10,000.00 and an item of $11,000.00, being two checks issued by the Wichita Royalty Company, made payable to the Security National Bank and those two checks did not go into Mr. Peckham's account in the City National Bank, and that $21,000.00 is included herein in error. At the time this was made up, I did not have the Wichita Royalty Company's check available,
for inspection, however, I will say that I had
1559 not asked for them at that time. If that $21,-
000.00 went into Mr. Peckham's personal account, it went in there by indirection. Both of the above checks were payable to the Security National Bank, they were not deposited in the City National Bank to Mr. Peckham's individual account. The checks are dated, $11,000.00 July 2, 1924, and $10,000.00 July 24, 1924. They were paid by the Security National Bank out of the City National Bank. There was a $11,000.00 deposit made on July 2, to George Peckham's account in the City National Bank. There was a deposit of $10,000.00 made to George Peckham's account in the City National Bank on July 25th, about the time of the issuance of these two checks. Of course, my investigation showed that the checks themselves were not deposited to the credit of Mr. Peckham. From what source he obtained that $21,000.00 I am unable to ascertain. I am informed the books of the Security National Bank have been destroyed. Nevertheless, I classified that in the transfer of funds from the Wichita Royalty Company, in making up this statement, which took that $20,000.00 to make up the total of $180,323.30, that item does not include the salary checks. Including Mr. Peckham's salary checks, all expense items and any other item issued to him by the Wichita Royalty Company and transferred and deposited to his personal account at the City National Bank, the sum was $186,859.20, being made up of one hundred and twenty-four items, and stretching over the entire period beginning January 1,

1923, and closing at the time of his death in 1929.
1560 Now, this $180,323.32 must be reduced by the amount of that $21,000.00, then to that sum is added the salary checks and expense checks which makes up all the items which went to his account as transferred from the Wichita Royalty Company—in other words, I take from the $180,000.00 the $21,000.00 item and add to it all of the salary checks and other expense items, and get a grand total of $186,000 and some odd dollars.

Mr. Humphrey:
We offer the audit in evidence.

(Instrument marked "Plaintiff's Exhibit 207")

1561 Summary of Funds Deposited to the Personal Account of G. W. Peckman, January 1, 1923, to November 6, 1929.

Source of Funds Deposited.

Year		Items	From Wichita Royalty Company	Items	From Other Sources	Items	Total Deposits
1923		7	$ 9,663.33	201	$242,189.37	208	$251,852.70
	Percent	3%	4%	97%	96%	100%	100%
1924		6	38,445.00**	285	392,256.53	291	430,701.53
	Percent	2%	9%	98%	91%	100%	100%
1925		5	20,250.00	196	449,365.09	201	469,615.09
	Percent	2%	4%	98%	96%	100%	100%
1926		17	95,488.51	69	145,930.65	86	241,419.16
	Percent	20%	40%	80%	60%	100%	100%
1927		9	14,201.82	68	76,098.48	77	90,300.30
	Percent	12%	16%	88%	84%	100%	100%
1928		2	2,274.66	63	66,870.96	65	69,145.62
	Percent	3%	3%	97%	97%	100%	100%
1929—(10 Mo. and							
	6 Days)	-o-	-o-	82	130,499.73	82	130,499.73
	Percent	-o-%	-o-%	100%	100%	100%	100%
	Totals	46	$180,323.32	964	$1,503,210.81	1,010	$1,683,534.13
	Percent	5%	11%	95%	89%	100%	100%

1354

**Note: See explanatory notation regarding a portion of this amount at the bottom of the following page.

Note: In the following pages, the above is shown by months for the entire period.

1562 Funds Deposited in the Personal Account of G. W. Peckham, January 1, 1923, to November 6, 1929.

	Deposited to Peckham's Account				Funds From The Wichita Royalty Co.	
	Number of Items	City National Bank	Other Banks	Total	Amount	Items
1923						
January	9	$10,217.87			$1,040.00	1
February	14	13,327.28			1,046.66	2
March	21	14,728.31				
April	18	25,087.45			5,043.34	3
May	21	16,946.59			2,533.33	1
June	11	31,576.45				
July	20	28,180.00				
August	21	57,576.13				
September	13	25,698.29				
October	11	7,682.46				
November	30	13,488.13				
December	16	7,343.74				
Total	208	$251,852.70		$251,852.70	$9,663.33	7

	Deposited to Peckham's Account				Funds From The Wichita Royalty Co.	
	Number of Items	City National Bank	Other Banks	Total	Amount	Items
1924						
January	17	$ 7,291.04			$5,000.00	1
February	13	33,927.52			2,500.00	1
March	29	133,818.53			9,250.00	1
April	26	33,192.72				
May	31	26,699.20				
June	19	23,111.03				
July	34	26,615.40			21,000.00**	2
August	5	3,214.65				
September	8	3,819.24				
October	50	21,159.31				
November	32	38,589.63	$3,000.00			
December	27	65,513.26	10,750.00		695.00	1
Total	291	$416,951.53	$13,750.00	$430,701.53	$38,445.00	6
1925						
January	24	$48,644.50	$20,000.00			
February	26	46,025.30				
March	13	25,910.74				
April	42	112,719.80	10,000.00			

May	17	41,964.86			$ 2,500.00	1
June	11	26,578.40	19,500.00		11,000.00	2
July	19	39,667.23				
August	2	837.93				
September	18	11,837.58	3,000.00			
October	9	11,022.36			5,500.00	1
November	10	39,545.75				
December	10	12,360.64			1,250.00	1
Total	201	$417,115.09	$52,500.00	$469,615.09	$20,250.00	5

**Note:—Explanation of $21,000.00 Item.

This item consists of two checks—one for $11,000.00, issued on July 2, 1924, and one for $10,000.00, issued on July 24, 1924; both drawn on the deposit account of the Wichita Royalty Company at the City National Bank and both were payable to the Security National Bank. And neither of these checks were deposited in the City National Bank. This item is listed and shown above only because of the allegations in the cross complaint and should not be classed as a transfer of funds from the Wichita Royalty Company to the Individual account of G. W. Peckham.

1926						
January	9	$30,379.98			$25,769.07	3
February	8	32,206.26				

	Deposited to Peckham's Account				Funds From The Wichita Royalty Co.	
	Number of Items	City National Bank	Other Banks	Total	Amount	Items
March	9	26,941.70	$8,285.00		31,123.70	3
April	3	604.38				
May	10	4,942.08			4,500.00	2
June	10	22,403.27			4,500.00	1
July	6	1,691.27			1,000.00	1
August	4	13,007.58			8,357.58	2
September	6	6,419.47				
October	9	55,017.24			10,000.00	1
November	5	33,500.00			7,500.00	1
December	7	6,020.93			2,738.16	3
Total	86	$233,134.16	$8,285.00	$241,419.16	$95,488.51	17
1927						
January	8	$10,098.16			$2,000.00	1
February	12	6,819.66			2,500.00	1
March	12	10,111.49			2,801.82	3
April	11	17,864.00				
May	7	6,321.29				
June	5	3,521.00			1,200.00	1
July	3	1,466.50				

August	5	4,000.00			1,500.00	1
September	5	20,550.87				
October	2	3,000.00			2,400.00	1
November	3	3,200.00			1,800.00	1
December	4	3,347.33				
Total	77	$90,300.30		$90,300.30	$14,201.82	9
1928						
January	6	$ 2,864.00				
February	5	7,899.00				
March	6	939.50				
April	3	2,567.87			$1,850.00	1
May	4	1,324.68				
June	5	2,613.37				
July	7	7,712.50				
August	4	9,200.00				
September	9	18,398.80			424.66	1
October	3	898.00				
November	8	5,394.90				
December	5	9,333.00				
Total	65	$69,145.62		$69,145.62	$2,274.66	2

1929	Deposited to Peckham's Account: Number of Items	City National Bank	Other Banks	Total	Funds From The Wichita Royalty Co.: Amount	Items
January	5	$ 3,284.66				
February	2	504.00				
March	5	1,300.00				
April	3	10,871.16				
May	6	11,461.45				
June	11	50,490.53				
July	13	18,700.42				
August	10	11,080.25				
September	13	14,255.84				
October	12	7,651.42				
November (6 da.)	2	900.00				
Total	82	$130,499.73		$130,499.73	-0-	-0-
Total January 1, 1923 to November 6, 1929		$1,608,999.13	$74,535.00	$1,683,534.13	$180,323.32*	

*Note:—These amounts do not include the monthly salary and expense items paid G. W. Peckham, but do include any and all payments made to G. W. Peckham for the purchase of proerties for the account of Wichita Royalty Company or for the payment of said Company's liability for borrowed monies. There is also included herein all checks which show the City National Bank, or any other bank, as payee and which were deposited in said Peckham's personal account.

1565 The Witness:

Plaintiff's Exhibit 208, which you now hand me, is a reconciliation of the amount as alleged to have been transferred to George Peckham's account and set out in Mr. Scannell's testimony of this record, and the actual amount which we find was actually transferred from the Wichita Royalty Company's account to the account of G. W. Peckham. Mr. Scannell testified that the total transferred from the account of the Wichita Royalty Company to the account of G. W. Peckham during this time, was $253,418.41, and I have undertaken to determine the accuracy of that statement. He has included in that sum numerous items which were not transferred to Mr. Peckham's account, and which you could not well classify as transferred, because they did not enter into Mr. Peckham's account; they consist of fifteen checks, which they allege as transfers from the royalty company to Peckham and which checks never went into Peckham's account, and were not issued to Peckham or bearer, as scheduled in Plaintiff's Exhibit 208. I have listed in my schedule $64,533.00 worth of checks; the checks either did not go into Mr. Peckham's account or they were not payable to Peckham or bearer. Check No. 1,253, issued March 10, 1923, was payable to the City National Bank and it was to B. L. Fain, he got that for the Grimshaw royalty amounting to $2,500.00, Mr. Peckham did not get that, it did not go into his bank account.

Check No. 46, issued August 14, 1923, was payable to W. H. Peckham and it was for oil obligation on some Oklahoma property up here. However, W. H.

1566 Peckham indorsed it and G. W. Peckham deposited it to his account, but it did not come from the Royalty Company to George Peckham. Check No. 48, issued August 14, 1923, payable to W. H. Peckham was for a debt on some oil properties, however, W. H. Peckham indorsed it and George Peckham took the check and indorsed it himself again and deposited it to his account. It did not come from the Royalty Com-

pany to George Peckham. I know what those checks were for, they were some obligations on some Oklahoma property. The first check to W. H. Peckham, No. 46, was to apply on the last payment of royalty interest No. 68, which was the Ellis Holmes tract which they had bought from W. H. Peckham and on which they still owed the balance. And the checks issued to B. L. Fain was to apply on royalty interest No. 67, for the Eagle Pitcher lease, that they owned in Oklahoma and on which at that time owed B. L. Fain a balance.

Check No. 48, issued to W. H. Peckham was to apply on royalty interest No. 7, being the Eagle Pitcher lease, and constituted an assignment of the debt they owed Peckham from the purchase price of that. Some of those purchases were made prior to the time Peckham became trustee. The Eagle Pitcher and the Ellis Holmes, according to the Wichita Royalty Company records were very productive properties, and paid considerably more than the purchase price.

Check No. 49, was issued to B. L. Fain and indorsed by B. L. Fain, then indorsed by George Peckham and deposited to George Peckham's account, and it was issued to B. L. Fain to apply on Eagle Pitcher lease,
1567 Okmulgee, Oklahoma, and it was for an obligation which they owed B. L. Fain for the purchase price of that property.

The next item was check No. 101, payable to the City National Bank, dated November 14, 1923, for $2,200.00, and it was given to purchase oil runs, and on the same day check No. 102, payable to the City National Bank for $500.00 was given for the same purpose. Those two checks were not deposited in George Peckham's account, I verified that from George Peckham's sheet and records.

No. 154, dated February 2, 1924, was issued to B. L. Fain for $12,000.00 and the original voucher stated, "To purchase royalty interest in Tonkowa, and Creek County, Oklahoma." But later on that $12,000.00 was applied on the purchase price of the Wilson Royalty. However,

the check was issued to B. L. Fain and B. L. Fain indorsed it. George Peckham indorsed it and deposited it in George Peckham's account. George Peckham acquired the Wilson royalty and transferred it to the Wichita Royalty Company, an interest in it,—the check came through B. L. Fain.

Check No. 237, issued on July 2, 1924, payable to the Security National Bank in the amount of $11,000.00, was not deposited to George Peckham's account.

Check No. 246, issued July 24, 1924, payable to the Security National Bank in the amount of $10,000.00, and was not deposited to George Peckham's per-
1568 sonal account. Those two items make up the $21,000.00, which I have corrected on Plaintiff's Exhibit 207.

Check No. 479, issued March 6, 1926, payable to the Security National Bank in the amount of $6,000.00, that check was deposited in the Security National Bank to the credit of George Peckham and that happens to be one of the Security National Bank statements that we have been able to find, among George Peckham's papers. That check was not deposited to the credit of George Peckham in the City National Bank at all.

Check No. 557, issued December 7, 1926, payable to the City National Bank in the amount of $1,920.00 was not deposited to George Peckham's account. It went to take up a draft direct for some properties which went through the Wichita Royalty Company and was the Hartley County property, being property No. 94, Wichita Royalty Company. That did not go to the credit of George Peckham.

The next check, 602, dated April 23, 1927, issued to B. L. Fain for $1,000.00 was to purchase the Milner Oil runs; that check was indorsed by B. L. Fain and later indorsed by G. W. Peckham and deposited to Peckham's account. It came through B. L. Fain and George Peckham.

Check 607, dated May 6, 1927, was issued to B. L. Fain and was another payment on those Milner oil runs which

the Wichita Royalty Company bought; that check was indorsed by B. L. Fain, and then indorsed by
1569 George Peckham, and deposited in George Peckham's account, and came through Fain and Peckham.

No. 610, issued May 16, 1927, payable to B. L. Fain and was for the balance due on the Milner oil runs which the Wichita Royalty Company bought; that check was indorsed by B. L. Fain, later indorsed by G. W. Peckham and deposited in G. W. Peckham's account. That accounts for $64,553.81, that Mr. Scannell claims was transferred of the Wichita Royalty Company account to Peckham's account.

The next item, fifteen checks issued to Peckham or bearer for salary and expenses which never found their way into Peckham's account in the City National Bank as per my schedule amounting to $5,030.18. That is schedule A. None of those items on Schedule A was deposited to George Peckham's individual account. I will explain the remainder of that statement, there was three checks issued to bearer and set out in George Peckham's account in the City National Bank, but were not alleged as transferred by the Royalty Company as shown on page 10, attached hereto.

On page 10, the first check, No. 1194, dated January 7, 1923, and payable to the City National Bank for payment of property No. 52, for $1,040.00, deposited to George Peckham's account. That was the Curry property, in Texas.

One thousand two hundred and thirty eight is a check issued on February 21, 1923, payable to the City National Bank, being a payment on property No. 52, and deposited to Peckham's personal account, and
1570 amounting to $1,046.66.

The next item, check No. 1,282, issued on April 2, 1923, payable to the City National Bank and being a payment on property No. 70, and deposited to George Peckham's account in the sum of $1,006.67. That was the Ellis Holmes tract, Eagle Pitcher lease, Okmulgee

County, Oklahoma. That property No. 52, on which two payments were made, the Curry property was bought from George Peckham before the first of January, 1923, while Ross Robertson was trustee. These two checks of $1,040.00 and $1,046.00, each was a payment on that property. Check No. 7, $1,006.67, was a payment on the Eagle Pitcher lease in Oklahoma. I think there was payments made on it prior to the time George Peckham took office, and that payment is applied on the account which they owed W. H. Peckham.

Agreement: Mr. Morrow, the checks, Nos. 1,194 and 1,238, are the two checks that were shown on the deposit slip and introduced in evidence this morning, as having been taken by Mr. Deaton through the collection department of the City National Bank of Wichita Falls; and these two each represent payments by the royalty company upon an indebtedness to George Peckham, which indebtedness was created prior to the time that Peckham became trustee, and at a time when Robertson was trustee.

Mr. Rogers:

We agree to that.

1571 The Witness:

This item of $186,859.20 represents the fund actually evidenced by checks issued to G. W. Peckham or bearer and deposited to the credit of his account at the City National Bank of Wichita Falls, Texas, and it includes salaries, moneys advanced to him for properties, moneys advanced to him to pay their indebtedness, and any and all checks issued to him by the Wichita Royalty Company and deposited to his personal account; it represents the entire transfer of funds direct from the Wichita Royalty Company's account to Peckham's account from January 1, 1923, to November 6, 1929, including salary checks and expense items. The supporting data on that is shown in Plaintiff's Exhibit 208 on pages 1369 and 1373.

Mr. Humphrey:

We offer in evidence Plaintiff's Exhibit 208, as follows:

(Marked "Plaintiff's Exhibit 208" and reading as follows:)

PLAINTIFF'S EXHIBIT 208.

Reconcilement of the Funds Alleged to Have Been Transferred to G. W. Peckham's Personal Bank Account With the Amount of the Funds Actually Transferred to His Account, January 1, 1923, to November 7, 1929.

P. H. Lambert & Company, Certified Public Accountants, Wichita Falls, Texas.

1572 Funds Alleged by Wichita Royalty Company to Have Been Transferred to the Account of G. W. Peckham in the City National Bank and the Reconcilement of the Alleged Amount With the Actual Amount of Such Transferred Funds.

Total amount alleged to have been transferred from the Wichita Royalty Company to Peckham's personal account at the City National Bank (Scannell's testimony, Page —)		253,418.41
Deduct—		
Reconcilement With Actual Transfers.		
Fifteen checks alleged as transfers from the Royalty Company to Peckham, but which checks never went into Peckham's account, or were not issued to either Peckham or Bearer, as per schedule on Page 1375, attached	$64,533.81	
Fifteen checks issued to Peckham or bearer for salary and expenses which never found their way into Peckham's account at the City National Bank as per schedule on page 1374, attached	5,030.18	69,583.99
Balance		$183,834.42

Add—		
Three checks issued to bearer and deposited in Peckham's account at the City National Bank, but not alleged as transfers by the Royalty Company, as per schedule on page 1376, attached	3,093.33	
Less: Uniocated difference	68.55	3,024.78
Funds actually evidenced by checks issued to G. W. Peckham or bearer and deposited to the credit of his account at the City National Bank as set out in the schedule on pages 1369 to 1374, attached.....		186,859.20

1573 Summary of Wichita Royalty Company Checks Issued to Bearer or G. W. Peckham and Deposited in the City National Bank to the Credit of G. W. Peckham.

January 1, 1923, to November 7, 1929.

	For Salary		Refund of Expense		To Buy Properties or Retire Liabilities		Total	
Year	Items	Amount	Items	Amount	Items	Amount	Items	Amount
1923	9	4,500.00	3	474.65	6	9,663.33	18	14,637.98
1924	9	4,500.00	1	55.35	5	18,645.00	15	23,200.35
1925	13	5,300.00	0	.00	5	20,250.00	18	25,550.00
1926	9	3,600.00	0	.00	14	88,250.35	23	91,850.35
1927	12	4,800.00	2	647.33	9	14,239.98	23	19,687.31
1928	12	4,800.00	3	858.55	2	2,274.66	17	7,933.21
1929 (to 11-7)	10	4,000.00	0	.00	0	.00	10	4,000.00
Totals	74	$31,500.00	9	2,035.88	41	$153,323.32	124	$186,859.20

1369

1574 Detailed Statement of Wichita Royalty Company Checks Issued to G. W. Peckham and Deposited to His Account in the City National Bank.

Date Paid	Check No.	Amount and Purpose		
		Salary	Expense Refunds	On Properties and Debts
1923				
1-17	1194			$1,040.00
2- 5	1217	$500.00		
2-21	1238			1,046.66
3- 1	1245	500.00		
3-14	1262		$ 52.25	
4- 2	1280	500.00		
4- 2	1282			1,006.67
4- 2	1281			1,520.00
4-10	1291			2,516.67
4-17	1290		22.40	
5- 8	1310	500.00		
5- 8	1322		400.00	
5-11	1325			2,533.33
8- 3	34	500.00		
9- 1	54	500.00		
10-16	73	500.00		
11- 1	92	500.00		
12-24	134	500.00		
		$4,500.00	$474.65	$9,663.33
1924				
1-19	147			5,000.00
1-31	149	500.00		
2- 9	160			2,500.00
2-29	169			1,200.00
3- 4	171	500.00		
3-18	185			9,250.00
3-29	188	500.00		
5- 1	205	500.00		
6-28	232	500.00		

Date Paid	Check No.	Amount and Purpose: Salary	Expense Refunds	On Properties and Debts
7-31	247	500.00		
7-31	251		55.35	
10-18	272	500.00		
10-31	286	500.00		
11-29	304	500.00		
12-23	317			695.00
		$4,500.00	$55.35	$18,645.00
1925				
1- 3	320	500.00		
2- 5	338	400.00		
3- 5	347	400.00		
4- 2	357	400.00		
5- 2	370	400.00		
5- 5	373			2,500.00
6- 2	378	400.00		
6-24	385			6,000.00
6-29	387			5,000.00
7- 7	388	400.00		
8- 3	400	400.00		
9-10	411	400.00		
9-30	422	400.00		
10- 8	427			5,500.00
11- 2	433	400.00		
12- 3	444	400.00		
12-28	451			1,250.00
12-31	453	400.00		
		$5,300.00	$ .00	$20,250.00
1926				
1- 4	452			5,000.00
1-11	458			5,000.00
1-18	461			15,769.07
2- 2	466	400.00		
2-27	477	400.00		

Date Paid	Check No.	Amount and Purpose: Salary	Expense Refunds	On Properties and Debts
3- 6	478			17,623.70
3-31	485			7,500.00
4- 3	487	400.00		
5-20	503			3,000.00
5-29	505	400.00		
6- 2	507			1,500.00
6-16	510			4,500.00
7- 6	512	400.00		
7-15	519			1,000.00
8- 2	523	400.00		
8- 2	525			4,000.00
8-27	532			4,357.58
9-30	537	400.00		
10-14	541			10,000.00
10-30	545	400.00		
11-20	550			7,500.00
12- 2	552	400.00		
12- 2	554			1,141.82 160.00 198.18
		$3,600.00	$ .00	$88,250.35

1927

Date Paid	Check No.	Amount and Purpose: Salary	Refunds	Debts
1- 3	564	$ 400.00		
1- 1	556-A			$ 538.16
1-19	571			2,000.00
2- 2	574	400.00		
2-19	579			2,500.00
3- 2	581	400.00		
3- 8	582		$500.00	
3-16	583			301.82
3-23	591			8,000.00
4- 2	594	400.00		
4-30	604	400.00		

Date Paid	Check No.	Amount and Purpose Salary	Refunds	Debts
6- 8	614	400.00		
6-16	620			1,200.00
7- 1	623	400.00		
8- 1	63[illegible]	400.00		
8-16	635			1,500.00
9- 6	637	400.00		
10-15	650			2,400.00
11- 5	653	400.00		
11-25	657			1,800.00
12- 5	659	400.00		
12-21	670		147.33	
12-27	672	400.00		
		$4,800 00	$647.33	$14,239.98

1928

Date Paid	Check No.	Amount and Purpose Salary	Expense Refunds	On Properties and Debts
1-31	684	400.00		
3- 6	692	400.00		
3-31	701	400.00		
4- 6	702		548.12	
4-11	706		169.75	
4-23	710			1,850.00
5- 1	713	400.00		
5-21	718		140.68	
6-12	720	400.00		
7- 9	727	400.00		
8- 3	738	400.00		
9-10	747	400.00		
9-27	752			424.66
10-12	754	400.00		
11- 1	762	400.00		
11-30	767	400.00		
12-31	775	400.00		
		$4,800.00	$858.55	$2,274.66

1929.

Date Paid	Check No.	Salary	Amount and Purpose Expense Refunds	On Properties and Debts
2- 5	785	400.00		
3- 8	793	400.00		
3-26	797	400.00		
5- 1	806	400.00		
5-31	813	400.00		
7- 9	821	400.00		
8- 2	829	400.00		
9- 5	837	400.00		
10- 2	843	400.00		
11- 1	852	400.00		
		$4,000.00	.00	.00

1579 Wichita Royalty Company Checks Issued to Bearer or G. W. Peckham and Cashed, January 1, 1923, to November 7, 1929.

Date	Number	Amount	Purpose
1-16-23	1195	500.00	Traveling Expense
3-20-23	1272	500.00	Traveling Expense
6- 1-23	1339	500.00	Salary
7- 3-23	13	500.00	Salary
11-30-23	115	500.00	Salary
3- 1-24	180	30.95	Insurance on Car
5-31-24	221	500.00	Salary
7-20-25	398	10.00	Revenue Stamps
11- 6-25	438	4.75	Revenue Stamps
5- 3-26	497	400.00	Salary
8-20-26	529	400.00	Salary
12-22-26	556	700.00	For Highland Irrigation
9-30-27	643	400.00	Salary
10- 1-27	644	62.85	Miscellaneous
1-14-29	778	21.63	Taxes
	Total	$5,030.18	

1580 Items Alleged by the Royalty Company as Transfers of Funds to the Account of G. W. Peckham, but, in Reality, Not Transfers and Not Included in Our List of Funds Transferred to Peckham.

Check No.	Date	Payee	Purpose	Amount
1253	3-10-23	City National Bank	To B. L. Fain for Property #71	2,500.00
46	8-14-23	W. H. Peckham	For debt due W. H. Peckham	9,219.51
48	8-14-23	Do	Do	1,033.33
47	8-14-23	B. L. Fain	For debt due B. L. Fain	1,560.00
49	8-14-23	Do	Do	4,120.97
101	11-14-23	City National Bank	Not deposited in Peckham acct.	2,200.00
102	11-14-23	Do	Do	500.00
154	2- 2-24	B. L. Fain	Issued to B. L. Fain	12,000.00
237	7- 2-24	Security Nat'l Bank	Not deposited in Peckham acct.	11,000.00
246	7-24-24	Do	Do	10,000.00
479	3- 6-26	Do	Do	6,000.00
557	12- 7-26	City National Bank	Not deposited in Peckham acct.	1,920.00
602	4-23-27	B. L. Fain	Issued to B. L. Fain	1,000.00
607	5- 6-27	Do	Do	500.00
610	5-16-27	Do	Do	1,000.00
		Total of Such Items		$64,553.81

1581 Items Included in Our List of Funds Transferred from the Royalty Company to G. W. Peckham's Account at the City National Bank But Not Alleged as Transfers by the Royalty Company.

Check No.	Date	Payee	Purpose	Amount
1194	1- 7-23	City National Bank.....	Payment on Property #52.....	$1,040.00
1238	2-21-23	Do	Do	1,046.66
1282	4- 2-23	Do	Due on Property #70.....	1,006.67
		Total		$3,093.33

1582 The Witness:

Plaintiff's Exhibit 209, is an analysis of the Wichita Royalty Company's balance sheet and the indebtedness to the City National Bank for the years 1923-1929 inclusive. In the column at the left I show the balance sheet as shown by their records. In the column to the right I show the balance sheet after adjustment, that is, after eliminating appreciated value which they added to their properties, and after setting up the depletion in the year in which it occurred instead of waiting until 1927 and setting it up. That made a difference between the surplus of $37,679.61 as shown by their records, and the deposit of $440,167.56, as shown after those adjustments were made. Mr. Peckham took office January 1, and this is made up at the close of the first fiscal year after he took office, which was May 31, or five months after. I took the depletion on the books, which could readily be done from the books of the company and the information contained. The next one is a balance sheet on May 31, 1924, and the next one May 31, 1935, likewise, the balance sheet during the whole period of time that Mr. Peckham was in office as trustee. This shows the notes payable during this period of time at the close of each year, and shows that in 1923 there were dividends paid in the sum of $151,998.00. Prior to the time George Peckham took charge, the dividends paid for that fiscal year were $78,981.57, and subsequent to the time he took office and before the close of the books May 31, there was paid $73,017.32 dividends. For the fiscal year 1924

1583 there were paid $24,447.45 dividends. Dividends for 1925 amounted to $33,393.27. Dividends for 1926 amounted to $16,329.80—that is the last dividend as shown by their records.

The next two exhibits, is an analysis of the funds of G. W. Peckham to pay his personal indebtedness to the City National Bank from January 1, 1923 to November 17, 1925; and from November 17, 1925 to October 25, 1929, marked "Plaintiff's Exhibits 210 and 210a".

Plaintiff's Exhibits 210 and 210a represent an analysis of the source of funds applied by G. W. Peckham to pay his personal indebtedness to the City National Bank from January 1, 1923 up to and including October 25, 1929,—in two separate reports. During most of this time Mr. Peckham was a customer and borrowers from the City National Bank and kept a deposit account in that bank during that time. He kept a note account or a liability account with that bank practically the whole period of time. The Wichita Royalty Company also kept an account, a deposit account, with the City National Bank during that period of time.

Plaintiff's Exhibit 210 is an analysis of the source of funds applied to George Peckham's account to pay his personal indebtedness to the City National Bank, that is, as to whether he used personal funds or transferred funds with which to pay his personal indebtedness. In other words, it is a tracing of the funds. By personal funds, I mean funds that came from other sources than by transfer from the Wichita Royalty Company. The principles followed in attempting to trace those funds that went to pay Mr. Peckham's personal indebtedness to the City National Bank, I used what is called the minimum balance rule, which my schedule shows. I will read what it shows, what I understand it to be. "The schedules here in submitted present an analysis of the source of the funds used by G. W. Peckham from his individual account with which to pay his personal indebtedness to the City National Bank, beginning January 1, 1923, and ending October 25, 1929, which is the last date herein recorded on which G. W. Peckham made a payment on his personal indebtedness to the bank."

1584

In making this analysis, I have adopted what is known as the "minimum balance rule, applying only those funds (against the individual account to the trust) which are clearly earmarked and traceable as trust funds, treating all other funds withdrawn and not clearly identified as for trust purposes, as funds used for individual pur-

poses, and when the trust funds have been reduced or dissipated, treating subsequent deposits of personal funds made in due course of business not as a restoration of trust funds." In other words, I followed the rule in the case of Maryland Casualty Company versus City National Bank, 29 F (2) 662, to the effect that when trust money has been deposited in the individual account and it must be determined how much of it remains on a given date, the minimum balance existing between that date and the date of deposit is the amount remaining and identifiable as a trust fund. That is the rule adopted.

1585 The second page is a statement of the payments made from G. W. Peckham's personal account on his personal indebtedness to the City National Bank from January 1, 1923 to November 17, 1925. It shows the date the payments were made and the amounts which he paid to the bank and the summary of what funds they were paid from. Whether they were trust funds or alleged to be trust funds or from personal funds. That is a statement from February 6, 1923 to July 7, 1925, being the first and last date on which payments were made on his account during that period, set out in this schedule. I divide this up into two periods, because when we started to work on this, we had only a list of the items of which they complained, coming down to date from November 17, 1925. Then later they set up numerous items going back to January 1, 1923 therefore we made this up in sections, embracing the separate dates, and it carries all the way through down to the date of Peckham's death.

From February 6, 1923, to July 7, 1925, applying the minimum balance rule, there were no payments made to the City National Bank during that period of time wherein any of the transferred funds were used for the payment of Peckham's personal indebtedness, that is, transferred from the Wichita Royalty Company. I have made an analysis of that. I used Mr, Peckham's individual ledger sheet, and identified the transfer of

funds from the Royalty Company in each of those instances.

Exhibit B on this report is an analysis of G. W. Peckham's indebtedness to the City National
1586 Bank for the period, showing the amount and period, by years, and by dates, and the dates on which he borrowed it, interest charges, and the amount he paid to the City National Bank by years for the period. The payments are shown in detail on the preceding page. Beginning on the fifth page of this Exhibit, I make an analysis of the source of funds from which each of those payments were made. The first payment on February 6, 1923, and the amount is $594.75. The last deposit of trust funds prior to that payment was January 16, 1923, $1,040.00. The opening balance of Peckham's on the day that he made the payment of $594.75 was $3,532.35. On that date he deposited $629.30 of that money in the bank, which was not from the Wichita Royalty Company's account. On that date, he had, after making that deposit, $4,161.65.

I make the statement in this report, the maximum possible trust fund on deposit in this account, and 2-6-23, minimum balance on 2-2-23, was $244.53; that was the minimum balance, the lowest balance in Mr. Peckham's account between the date of the last deposit of $1,040.00 on January 16, and the date on which this payment was made to the bank, which was February 6, 1923, and was $244.53, on February 2, 1923, which would be the minimum balance between those two dates. The largest amount of trust funds which he could have had on hand would have been $244.54. He had a balance of $4,161.65, from which is deducted the $244.53, leaving a balance of $3,917.12, on personal funds, with which to
1587 pay this $594.75 to the City National Bank.

The next payment, on March 5, 1923, he paid the City National Bank $1,000.00, on March 6, 1923, he paid them $500.00, on March 8, he paid them $500.00, and on March 8, he paid them another $500.00. Now, the last deposit of trust funds to the account of G. W.

Peckham prior to each of the above dates, was on February 21, 1923, and amounted to $1,046.66, and on the date of the first payment to the City National Bank, being March 5, 1923, he had on deposit $5,068.62, and then if you deduct from that amount on deposit the total amount of trust funds, he deposited on the last occasion, of a deposit of trust funds, he has a personal balance left of $4,021.96, with which to pay $1,000.00 to the City National Bank on March 5, 1923. On March 6, the date of the $500.00 payment to the bank, he had a balance on deposit of $3,233.54; if from that balance you deduct the entire trust fund deposited on the occasion of such last deposit, which was February 21, 1923, there remained $2,186.88 of personal funds with which to pay this $500.00 to the City National Bank; on March 8, the date he made the two $500.00 payments to the City National Bank, he had on deposit $4,619.84, and if from that amount you deduct the total of the last deposit funds, which was on February 21, 1923, there remains a balance of $3.573.18, of personal funds with which to pay this $1,000.00 to the bank. In other words, he had not made any transfer of funds subsequent to February 21, 1923, and prior to the last payment on March 8, 1923.

The next payment he made on his personal
1588 indebtedness is on April 23, 1923, $4,094.15. I am treating all of these transfers whether Peckham rightfully transferred them or wrongfully transferred them, as transfers of trust funds to his individual account. I made an analysis later on, showing the tracing of those funds, and what they were for.

The last deposit of funds of the Wichita Royalty Company to the account of G. W. Peckham, prior to April 23, 1923, was on April 10, 1923, amounting to $2,516.67; on April 23, 1923, the balance on deposit of Peckham's account was $5,046.25. The minimum balance between April 10, the date of the last deposit of trust funds, and April 23, the date of the payment to the bank was $316.63, on April 11. If from the opening balance, $5,046.25,

there is deducted this minimum balance $316.63, which leaves a balance of $4,729.62, of personal funds with which to pay this $4,095.15 to the City National Bank. The next payment he made, May 15, 1923, $1,008.55. The last deposit of funds from Wichita Royalty Company to the account of G. W. Peckham prior to May 15, 1923, was on May 11, 1923, amounting to $2,533.33. The balance on deposit to Peckham's account on May 15, 1923, was $7,492.63. He paid the bank $1,008.55, and the maximum possible trust fund on deposit on April 15, 1923, would be $2,533.00, which if you take from his balance of $7,496.63, would be more then four dollars, enough money on hand with which to pay the City National Bank from transferred funds.

He paid the City National Bank on June 22,
1589 1923, $3,015.60; on August 10, 1923, he paid the City National Bank $3,985.78; on November 13, 1923, he paid the City National Bank $1,000.00; on November 20, 1923, he paid the bank $2,000.00; on November 22, 1923, he paid the bank $1,000.00; on November 30, 1923, he paid the bank $1,555.82. No trust funds were deposited to the account of G. W. Peckham between May 11, 1923, and January 19, 1924. The last deposit of such funds, prior to each and all of the above payments, was on May 11, 1923, and was fully accounted for on that date. It is, therefore, evident that all of the above payments made to the City National Bank were made from G. W. Peckham's personal funds on deposit in his personal bank account, and the minimum balance between May 11 and June 22, the date of the first payment to the bank was $253.85; and the minimum balance on each of the other dates on which payments were made to the City National Bank was $37.99, being on June 23, 1923. I will explain, when I how the last deposit of trust funds were fully accounted for, on May 11, the Wichita Royalty Company gave G. W. Peckham check for $2,533.33, being a payment upon a royalty which they bought from G. W. Peckham, and from which royalty he transferred to the royalty com-

pany—that is Grimshaw Royalty No. 71—which cost $7,500.00. Peckham paid $8,000.00 for it, that is, originally, then on the sale price to the Wichita Royalty Company B. L. Fain got $2,500.00, making Peckham's cost $10,500.00, then he sold that to the royalty company for $7,500.00—that is, one-half of it. That property
1590 produced more than it cost, I don't remember — exactly.

The next transaction on February 5, 1924, G. W. Peckham paid to the City National Bank $67.67. The last deposit of trust funds to this account prior to February 5, was on February 2, 1924, and for $12,000.00, and that being a $12,000.00 check made payable to B. L. Fain, B. L. Fain indorsed to G. W. Peckham and G. W. Peckham deposited it in his personal account; and this $12,000.00, although it did not come directly from the Wichita Royalty Company to G. W. Peckham, was accounted for by G. W. Peckham, transferred to the Wichita Royalty Company, the interest of the Wilson Royalty, being their property No. 75, which they later issued a check as to the balance of the purchase price—in other words, that was recompensing Peckham for the payment of the Wilson Royalty. I do not know the date he acquired the royalty, but on April 22, 1924, he conveyed it to the Wichita Royalty Company, that interest which they bought from him, represented by this number. He had on deposit on that day, $2,593.62, with which to pay $67.67 to the City National Bank. The minimum balance was actually $39.99, because that $12,000.00 came from B. L. Fain, the check was made payable to B. L. Fain and it was set up here, merely to show that those items which they claim were transferred to George Peckham.

The next item was the payment to the City National Bank on February 21, 1924, of $8,022.28. Of that last deposit of trust funds to the account of G. W.
1591 Peckham prior to February 21, 1924, was February 11, 1924, amounting to $2,500.00. On February 21, 1924, there was a total fund on deposit in

G. W. Peckham's account of $15,936.79, from which if you deduct the maximum possible trust fund in this account on February 21, 1924, which was the minimum balance on February 19, 1924, and amounting to $1,398.93, you have left personal funds on deposit amounting to $14,537.86, with which to pay this $8,022.28 to the City National Bank.

The next payment, was March 17, 1924, Peckham paid the bank $10,000.00. The last transfer of funds from the royalty company's account prior to that payment was February 9, 1924, $2,500.000. Mr. Peckham had on deposit $10,466.33, at the opening of business on that date, and on the same day he deposited personal funds of $10,625.00, making a total funds on deposit that day, $21,091.33; and if from that account you deduct the minimum balance which was on February 19, 1924, that amounts to $1,398.93, you have $19,692.40 of personal funds left on deposit in his personal account with which to pay the City National Bank this $10,000.00.

The next item after that date, paid to the City National Bank on March 18, 1924, amounted to $10,026.75; and on the above date, March 18, 1924, trust funds were deposited to the account of G. W. Peckham in the sum of $9,250.00, and then was the first such deposit since February 9, 1924. An analysis of the funds in G. W. Peckham's account on March 18, 1924, the date of this payment to the bank, reveals he had a deposit an opening balance of $11,033.48. On that day he de-
1592 posited personal funds totaling $78,750.00 and this trust item of $9,250.00, making a total deposit of $88,000.00, added to his opening balance makes a total funds on hand, $99,033.48, and deducting the deposit of trust funds amounting to $9,250.00 leaves a balance of $89,783.48 of personal funds with which to pay this $10,026.75 to the City National Bank. This item of $9,250.00 represents the balance of the purchase price of one sixty-fourth royalty in the Wilson Royalty bought by the Wichita Royalty Company. G. W. Peckham acquired this property on April 22, 1924, and con-

veyed the same to the Wichita Royalty Company—that is their interest in the Wilson royalty, Property No. 75.

The next item, May 1, 1924, amounted to $2,038.07, and the last deposit of trust funds to the account of G. W. Peckham prior to May 1, 1924, was on March 18, 1924, and amounted to $9,250.00. The funds on deposit in G. W. Peckham's account on May 1, 1924, the date of this payment to the bank, was $4,874.60, and deducting from that amount the minimum balance amounting to $457.19, which existed on March 27, 1924, leaving a balance of $4,417.41 of personal funds on deposit with which to make this payment of $2,048.07 to the City National Bank.

The next payments which I show are two items, one June 7, 1924 for $4,027.47, and another payment of $1,000.00 on the same date.

The last deposit of trust funds to the account of G. W. Peckham prior to June 7, 1924 was on March
1593 18, 1924, and amounted to $9,250.00. That is the Wilson Royalty purchase. The funds on deposit to Peckham's account on June 7, 1924, was $1,256.39, on that date he made a deposit of personal funds in the sum of $5,000.00, making a total balance of $6,256.39 in his account; deducting from that amount the minimum balance of $457.19, existing on March 27, 1924, there is left $5,799.20 of personal funds on deposit in this account with which to pay this $5,027.47 to the City National Bank.

The next item, June 11, 1924, G. W. Peckham paid to the City National Bank, $234.22, the last deposit of trust funds to the account of Peckham prior to June 11, 1924, was on March 18, 1924 amounting to $9,250.00. The funds deposited in Peckham's account, of June 11, 1924, the date of this payment to the bank was $1,136.72. Deducting from that amount the minimum balance of $457.19, which existed on March 27, 1924, there was left on deposit in Peckham's personal account $679.53 of peronal funds with which to pay this $234.32 to the City National Bank.

He made the next payment on July 3, 1924, to the City National Bank, on the above date trust funds were deposited to the account of G. W. Peckham amounting to $11,000.00. Those items were not trust funds, but they were alleged as trust funds, and I set them up, and treated them as such. This is the $11,000.00 check made payable to the Security National Bank and it did not go into Mr. Peckham's account, but they allege it as transfers, and we set it up as transfers, trying
1594 to set up all the things they alleged. If you treat this $11,000.00 as coming in an indirect way through the Security National Bank or some other manner, into the City National Bank, the result would be that Mr. Peckham's payment to the bank was paid from his personal funds, regardless of the $11,000.00. I arrive at that in this manner—On July 3, 1924, there on deposit opening balance in Peckham's account of $7,-469.08, on that date there was deposited two items, one for $11,000.00 and another for $321.82, making a total deposit of $11,321.82. which, added to his opening balance, made funds on deposit in his account of $18,790.90. Now, from that sum you deduct the entire $11,000.00, it leaves $7,790.00 of personal funds with which to pay the City National Bank, $967.67.

Direct Examination.

By Mr. Morrow:

The $11,000.00 represented by Wichita Royalty Company's check No. 237, issued on July 2, 1924, and payable to the Security National Bank for that amount, and purports to have been given for the purchase of the White lands. That check was cashed at the Security National Bank and that check was not deposited in George Peckham's personal account, nor did it get into his personal account in the City National Bank. I am assuming the $11,000.00 which he deposited in the Security National Bank got into the City National Bank in some fashion, because they allege it. The Wichita Royalty

Company allege that in their petition as trans-
1595 fers, and I wanted to cover it and furnish all of those items which they allege, any portion of those items, which they allege were used to pay Peckham's personal debts, whether or not they were transferred.

In the first exhibit I identified, I pursued the same policy I am pursuing here, assuming all of the items they complain of were traceable items—in that schedule I included the $11,000.00 and the $10,000.00 which was issued twenty-two days afterward and handled in the same manner; and I included that check that was payable to B. L. Fain, indorsed by B. L. Fain and deposited to the account of George W. Peckham.

Direct Examination.

By Mr. Humphrey:

I treated this $11,000.00 in accordance with their petition, although my investigation disproved that fact. The check was drawn on the City National Bank and payable to the Security National Bank and cashed direct and not deposited in the City National Bank. If the proceeds of that sum got over here, it got over here through some other method than the check itself, probably to have been correct, I should have stated in calling these items trust funds, I should have said alleged trust funds, instead of calling these items transfers, I should have called them alleged transfers. It is my analysis that none of that payment of $967.67 was a part of the $11,000.00 deposit. After eliminating the entire $11,000.00 he had personal funds on deposit remaining
of $7,790.90, with which to pay this check of
1596 $967.67, which he gave the City National Bank on his personal indebtedness.

The next payment to the City National Bank I have grouped in two payments, one August 2, 1924, amounting to $57.77, and another payment on August 5, 1924, amounting to $117.57. The last deposit of trust funds

to the account of G. W. Peckham prior to August 2, or August 5, 1924, was on July 3, 1924, and amounted to $11,000.00, and this is the $11,000.00 we have just finished discussing. That was not, in fact, a transfer. The total funds on deposit in George Peckham's account on August 2, 1924, the date of the first payment to the City National Bank, was $14,308.31, and after deducting the maximum possible trust funds on deposit in this account, amounting to $9,241.65, and being the minimum balance on July 23, 1924, there is left $5,138.66 of personal funds with which to pay this $58.77 in the City National Bank. Now, on August 5, 1924, the date of the second payment to the City National Bank, Mr. Peckham had on deposit in his personal account $16,453.34. Deducting from this amount the sum of $9,241.65, being the minimum balance on July 23, between the date of the last deposit and the date of the payment to the bank, leaves a balance of $7,210.69, of personal funds on deposit in his account, with which to pay the bank this $117.57.

The next payment was made on October 30, 1924, and amounted to $12,500.00. The last deposit of trust funds to the account of G. W. Peckham prior to October 30, 1924, was on July 3, 1924, and amounted to $11,000.00 and this is the $11,000.00 we discussed a while ago. That is not, in fact, a transfer from the royalty company account direct to Peckham's account. On October 30, 1924, the date of this payment to the bank, Mr. Peckham had an opening balance of $1,284.29 on deposit in his personal account. On that day he deposited personal funds in the sum of $12,563.74, making a total of funds on deposit in his personal account of $13,843.03. Deducting from that the maximum possible trust fund on deposit in this account on this date, amounted to $667.68, and being the minimum balance as of October 27, 1924, leaves a balance of personal funds on deposit in his personal account of $13,180.35, with which to pay this $12,500.00, to the City National Bank.

1597

The next item, I grouped several payments, being four in number, to the bank, November 3, 1924, he paid to the bank $5,100.00; November 10, 1924, he paid to the bank, $200.00; November 29, 1924, he paid the bank $15,069.99; December 13, 1924, he paid the bank $12,016.00. The last deposit of trust funds to the account of G. W. Peckham prior to each of the above dates was on July 3, 1924, amounting to $11,000.00, and being the $11,000.00 discussed a moment ago. The funds on deposit to Mr. Peckham's account on November 3, 1924, the date of the first payment to the bank was $6,138.95; deducting from that amount the minimum balance of $626.18, on October 28, 1924, leaves a balance of personal funds on deposit to his account, on November 3, 1924, of $5,512.77, with
1598 which to pay the bank this $5,100.00. On November 10, 1924, Mr. Peckham had on deposit in his account $14,816.00. Deducting from this amount the minimum balance as shown on October 7, 1924, amounting to $2.00, leave a deposit, his personal account, $14,814.00 of personal funds with which to pay this $200.00 to the City National Bank. On November 29, 1924, Mr. Peckham had on deposit in his personal account $18,383.27. Deducting from this amount the minimum balance of his account as shown on October 7, 1924, amounting to $2.00, leaves $18,381.27 of personal funds on deposit in his personal account, with which to pay this $15,069.99 to the City National Bank. On December 13, 1924, the date of the last payment of this group, he had on deposit in his personal account $16,594.02, and deducting the minimum balance of $2.00 in his account on October 7, 1924, leaves a balance on deposit in his personal account of $16,592.02, of personal funds with which to pay this $12,000.00 to the City National Bank.

The next group, of four payments, to the City National Bank, the first being February 5, 1925, amounting to $10,200.00; the next being on February 18, 1925, amounting to $15,210.00; the next being April 17, 1925, amounting to $12,242.66. This last amount being two items, one for $12,162.66 and another of $80.00. The last deposit of

trust funds to the account of G. W. Peckham prior to either of the above dates, was on December 23, 1924, and amounted to $695.00. That is the Curtis Lane Royalty F. O. Harrell transferred to the Wichita Royalty
1599 Company. The $695.00 check was made payable to G. W. Peckham and states, "To purchase 1/16th of 1/8 royalty in 125 acres known as block 46, of the Mead L. M. Pasture subdivision." I presume Mr. Peckham paid Mr. Harrell for this royalty, but I do not know. I have not identified the payments from Peckham to Harrell. They had considerable transfers of money passing between them.

February 5 to April 7, I have a sum aggregating $37,000.00. The last deposit of trust funds was then $695.00, which was the consideration for the Curtis Lane Royalty, which the Wichita Royalty Company acquired from F. O. Harrell. The bank did not get any of that money, under the minimum balance rule.

I find, on February 5, 1925, the date of the first payment by Peckham to the bank, G. W. Peckham had on deposit in his personal account $14,422.00. Deducting from that the entire deposit of $695.00, being the last deposit of trust funds applied to this date, leaves a balance of $13,705.22 of personal funds deposited in his personal account, with which to pay this $10,200.00 in the City National Bank. On February 18, 1925, the date of the second payment to the bank, G. W. Peckham had $20,821.18, on deposit in his personal account, and deducting from that sum the entire $695.00, in the last deposit of the trust funds to his account, prior to this date, leaves a balance of $20,126.14 on deposit in his personal account, with which to pay this $15,210.00 to the City National Bank.

On April 7, 1925, G. W. Peckham had on deposit
1600 in his personal account $39,029.79. Deducting from this amount the entire $695.00, being the last deposit of trust funds prior to the date of this payment to the bank, leaves a balance of $38,334.79. The funds on deposit in Peckham's personal account with which to pay the bank this $12,242.66.

The next payment, a group of three items on May 12, 1925, he paid the bank $4,056.00. On June 6, 1925, he paid the bank $220.00. On June 11, 1925, he paid the bank $66.67. The last deposit to trust funds to the account of G. W. Peckham, prior to May 12, or June 6, or June 11, the three dates on which he made these payments to the bank, was on May 5, 1925, amounting to $2,500.00. Accounting for this $2,500.00 on May 6, the date he got that last deposit from the Wichita Royalty Company, he issued his personal check to Ray and Massie in the sum of $2,500.00, and acquired from Ray and Massie the identical property and Ray and Massie conveyed to the Wichita Royalty Company the identical property that this $2,500.00 stated it was issued for. That is, which the check and the voucher showed that it was issued for. That property never came through Peckham's name. It was the Routon property, sold by Ray and Massie to Wichita Royalty Company, Peckham paid $2,500.00 for it, and Wichita Royalty Company issued him its check for that amount and the voucher showed it was for that royalty.

On May 12, 1925, G. W. Peckham had on deposit in his personal funds totaling $5,451.37, with which to
1601 pay the City National Bank this $4,056.00. On June 6, the date of the second payment to the bank, G. W. Peckham had on deposit in his personal account $1,919.04 of personal funds with which to pay this $220.00 to the City National Bank. On June 11, 1925, G. W. Peckham had personal funds on deposit in his personal account at the City National Bank amounting to $602.54, with which to pay this $66.67 to the City National Bank. There was no use of trust funds whatever in the payment of these two sums, he took their check today and he issued his check today. I have an analysis of that letter.

The next item, July 7, 1925, G. W. Peckham paid the City National Bank $12,072.00. The last deposit of funds from the Wichita Royalty Company into the account of G. W. Peckham prior to July 7, 1925, was on June 29, 1925, and was for the purchase being property No. 80,

payment to Peckham and part of the purchase price on this property, amounted to $5,000.00. On July 7, 1925, G. W. Peckham had on deposit in his personal account $20,198.42. Deducting from that the entire $5,000.00 deposit, being the last deposit of trust funds prior to the date of this payment to the bank leaves a balance of $15,198.42, with which to pay this $12,070.00 to the City National Bank. That is property No. 80, on the Anderson Ranch and it is conveyed to the Wichita Royalty Company in two deeds, embracing 217 acres in Archer County, Texas. It cost $11,000.00. Mr. Peckham lacked six dollars and some cents paying that amount and we were unable to find the expense to which he went in
1602 acquiring this property. That $6.00 is one of the payments that Peckham advanced for the purchase price, I do not say that he did not actually pay this other $6.00. This completes the transactions and analysis of these payments to November 17, 1925, up to the date the first suit was filed.

Continuing the tracing of these funds, on Plaintiff's Exhibit 210a, that brings it on from the 17th of November, 1925, down to George Peckham's death. The total payments made, Exhibit A, of Plaintiff's Exhibit 210, is an analysis, statement of the payment of the principal and interest on Peckham's note to the bank, showing under the minimum balance rule, whether or not any transferred funds, or alleged transferred funds, were used for the payment of any part of that indebtedness. Exhibit A, of Plaintiff's Exhibit 210-a shows the total amount of payment from November 17, 1925, to October 25, 1929, the last payment that Peckham made before his death, amounting to $57,879.21. Then following the minimum balance rule, $1,102.71 of that was paid from the funds transferred from the account of the Wichita Royalty Company to Peckham's individual account. The amount paid from Peckham's personal funds was $56,776.50. Exhibit B of the same exhibit reflects an analysis to G. W. Peckham's indebtedness, City National Bank from November 17, 1925, to October 25, 1929, the date of the last payment

he made on the obligation. It shows the amounts borrowed, date borrowed, interest charged by the bank and the payments made by Peckham on his account.

1603 This shows that Mr. Peckham owed the bank at the time of his death $24,974.42. He owed the bank $27,500.00 on November 17, 1925. The sum varied, up and down.

Following Exhibit B, on page 1429 of the same exhibit, 210-a, I have an item of $1,007.23, paid to the City National Bank by G. W. Peckham on November 17, 1925, the analysis is; the last deposit of trust funds prior to November 17, 1925, was paid on October 8, 1925, and amounted to $5,500.00. This $5,500.00 was a check issued to G. W. Peckham by the Wichita Royalty Company and against which G. W. Peckham made the following disbursements; he purchased property No. 81, $2,252.25, and he purchased revenue stamps to go on that instrument, $2.52; commission paid on the purchase of that property, $225.00; legal expenses incurred in examining the title to that property, $25.00; to purchase property No. 82, $1,500.00. Funds returned to the Wichita Royalty Company, $1,500.00. Making a total of $5,504.75, accounted for by G. W. Peckham, out of this $5,500.00. This $5,500.00 went to the purchase of the Mathis royalty and to pay the expenses incident to the purchase of it. Peckham paid $4.75 more than the check amounted to, and he was refunded that much money by the check that has been offered in evidence here. Then $1,500.00 of that item went to buy the Kunkle royalty, which produced $7,000.00 or $8,000.00 worth of oil, probably over $9,000.00 of oil. The $1,500.00 was actually returned by Peckham to the Wichita Royalty Company as shown by their receipts and Peckham's checks. So the $5,500.00 is unquestionably accounted for.

1604 I will go ahead and analyze it, on November 17, 1925, the date of this payment to the City National Bank, G. W. Peckham had on deposit in his personal account, and after making the payments I have outlined in purchasing the properties for Wichita Royalty

Company, he had on deposit $3,216.76 of personal funds with which to pay the City National Bank, this $1,007.23; and applying the minimum balance on that day, he had on deposit $3,216.76, from which you deduct $604.40, being the minimum balance in his account on November 2, 1925, leaves a balance of $2,612.36 of Peckham's personal funds with which to pay this $1,007.23, to the City National Bank. In tracing the trust funds, where I find funds that Peckham paid out of his personal account for trust purposes, I classify them as properly paid, and that is what I did in this, the purchase of property No. 81, which was the Mathis property, he actually paid that $2,252.25, out of his personal account for this royalty, which was conveyed to the Royalty Company direct. He purchased revenue stamps $2.50. I heard Mr. Rogers' testimony as to the $225.00 commission, and I saw Mr. Peckham's checks. Also with reference to the $25.00 legal expense and this check to E. C. DeMontel of $71.00, I heard that testimony. I did not identify the $1,500.00 check for the purchase of the Kunkle royalty but he gave his check for that amount to B. L. Fain for the Kunkle royalty, and he transferred it to the royalty company, and the voucher of the royalty company shows that their
1605 $5,500.00, checks for $1,500.00 of which was for the Kunkle royalty, then there was an additional $1,500.00 including the $5,500.00 for royalties not described. I examined the receipts and saw Mr. Peckham's checks for this royalty.

The next payment, on February 13, 1926, when Peckham paid $550.00 to the City National Bank. The last deposit of trust funds to G. W. Peckham's account prior to February 13, 1926, was on January 18, 1926, and amounted to $15,769.07. On February 13, 1926, G. W. Peckham had on deposit in his personal account $22,750.27; from that amount deduct the balance of $2,996.80, which G. W. Peckham had on deposit on January 18, 1926, and the entire deposit of $15,769.07, making a total deduction of $18,765.87, leaves $3,984.40, of unquestionably personal funds with which to pay this $550.00 to the City National

Bank. His minimum balance was $1,801.71 on February 3, on May 15, 1926, he paid $550.00 to the City National Bank, I arrived at that analysis as follows; the last deposit of trust funds to G. W. Peckham's account prior to May 15, 1926, was on March 31, 1926, and amounted to $7,500.00; on May 15, 1926, George Peckham paid from his personal account to the Marlborough Addition, as contemplated in the above deposit, the sum of $7,500.00—he applied that amount for the purpose that the original voucher shows it was given for. The check of the Wichita Royalty Company dated March 1, 1926, payable to the City National Bank for $7,500.00, issued by E. E. Scannell for trustee, represents this deposit of $7,500.00 to the credit of G. W. Peckham. The voucher ac-
1606 companying this check shows that it was to apply on a half interest in improving the Marlborough Addition, improvement consisting of lights, water, gas, sewerage and paving the street, etc. The check marked "Defendant's Exhibit 116, is the check represented in this deposit. I have Mr. Peckham's bank statement with the Security National Bank, I have a memorandum showing the check for $7,500.00, payable to the Marlborough Addition, and a corresponding withdrawal of that amount on April 16, 1926. The Marlborough Addition books show on the cash receipts, page 2, line 4, reads as follows: "April 15, 1926, Security National Bank. Source, account G. W. Peckham investment $7,500.00 received, on G. W. Peckham's ledger account in the Marlborough Addition books, it shows on line 3, $7,500.00 credited to G. W. Peckham's investment account." The books of the Marlborough Addition, statement of the Security National Bank, memorandum slip accompanying that statement shows that Peckham issued his check for $7,500.00 to the Marlborough Addition. The Marlborough Addition's book account shows that there was deposited $7,500.00 from April 15 to the date these items were run through their books and paid, a day later, from his bank account. That is the basis that I found in my report that Peckham used the $7,500.00 evidenced by

this check for the purposes for which it was intended. Regardless of that fact, there is no use of funds, of this transfer of this $550.00—on May 16, 1926, the date he made this payment to the City National Bank, he had on deposit $916.57; deducting from that the mini-
1607 mum balance existing in his account on May 5, of $187.48, he had left $729.09 of personal funds with which to pay this $550.00 to the City National Bank.

The next item, August 5, 1926, G. W. Peckham paid the City National Bank $5,500.00. The last deposit of trust funds to G. W. Peckham's account prior to August 5, 1926, was on August 2, 1926, amounting to $4,000.00. On August 10, 1926, with no intervening application of trust funds to trust purposes, the balance in Peckham's account was $3,628.93, which left payment on August 10, 1926, of $550.00, made a payment from trust funds transferred from the Wichita Royalty Company, which was subsequently returned to their intended purpose on October 15, 1926, in other words, he accounted for them.

Agreement.

Mr. Rogers:

It appears from the report of the auditor, that he has drawn certain legal conclusions. May we agree that I object to all of the conclusions and all of the statements in that report, that express an opinion as to the effect of a transaction, as being beyond the function of the witness not the subject matter of expert testimony, or any other character of testimony. The transactions speak for themselves, involving questions of law, and at least questions of mixed law and facts, and that this objection, without having to be repeated, may from time to time apply to all of the testimony of the witness.

Mr. Humphrey:

That is agreed.

1608 The Witness:

This $550.00 came out of the transfer of $4,000.00, but the $4,000.00 was subsequently accounted for on October 15, 1926. The basis of my statement that the $4,000.00 was accounted for, is check No. 525, dated August 2, 1926, for that amount, the basis for that statement is that this amount is part of a series of payments which the Royalty Company paid G. W. Peckham, with which he was in turn to pay a maturing note. The voucher notation shows, "To apply on note due 9-19-26, for land in fee." That note was $9,595.74, principal and interest, they issued other checks in addition to the $4,000.00 check, which aggregated in all the above amount. All of the checks were deposited by Peckham to his personal account in the City National Bank. Then on October 15, 1926, he paid the Highland Irrigation Company $9,595.74, being the principal and interest on a note maturing against the Wichita Royalty Company land in fee. Here is the deposit slip, I do not have the check. I have Mr. Peckham's ledger account showing on October 15, 1926, a check was drawn for $9,595.74, against the individual account of Mr. Peckham in the City National Bank. I have the original deposit slip to the credit of the Highland Irrigation Company showing that the Highland Irrigation Company deposited a check drawn by G. W. Peckham on his account, in the exact sum of the withdrawal of $9,595.74, this is shown by Plaintiff's Exhibit 90, and by Plaintiff's Exhibit 91, deposit ledger account of G. W. Peckham with the City National Bank. Other items that went to make up this account, in addition to the

1609 $4,000.00 check, is a check issued by the Wichita Royalty Company on August 27, 1926, being No. 532, and amounting to $4,357.58. That is No. 532. Another check, No. 556, issued December 22, 1926, payable to G. W. Peckham for $700.00, and check No. 556a, issued on December 22, 1926, for $538.16. These checks were issued to Peckham to pay this $9,595.74 matured against land in fee. All of the above checks were signed by E. E. Scannell for the Wichita Royalty Company and drawn on the

account of the Wichita Royalty Company, two of them payable to G. W. Peckham and two of them to the City National Bank. The voucher notation on each of those four checks is as follows: No. 525, "Notes payable to apply on note due 9-19-26 to Highland Irrigation Company for land in fee." No. 532, the voucher notation, "Notes payable to apply on note due 9-19-26, to Highland Irrigation Company, for land in fee, $3,738.50, interest expense on above note, eight percent one year, $619.08." The total amount of the check was $4,357.58. Check No. 556, notation on voucher, "Interest expense to apply on two notes of $7,738.50, at the rate of eight percent per annum, this interest applying on period 9-19-25, to 9-19-26, Highland Irrigation Company notes." Check No. 556a, the voucher notation has this, "Interest expense to apply on two notes of $7,738.50, at the rate of eight percent per annum, this interest applying on period 9-19-25 to 9-19-26, Highland Irrigation Company note for balance of interest paid, see check No. 556." Those four checks aggregate $9,595.74, the same amount as Peck-
1610 ham's check paid to the Highland Irrigation Company on October 15, 1926.

The next payment, September 30. 1926, G. W. Peckham paid the City National Bank $503.10. The last deposit of trust funds to G. W. Peckham's account prior to September 30, 1926, was August 27, 1926, amounting to $4,357.58. On September 30, 1926, with no intervening application of funds to trust purposes, the balance in Peckham's account was $5,939.47 of personal funds and $128.51 of trust funds. He had on hand $5,939.47 of personal funds on September 30, 1926, with which to pay this $503.10, to the City National Bank. The minimum balance between those dates was $128.51 on September 2, 1926, which I did deduct from his total funds on deposit, leaving $5,939.47 of personal funds in his account with which to pay this $503.00, so treating that $4,357.00 as trust funds unaccounted for, still there would be sufficient to pay this item. That check was one of the checks issued to pay the Highland Irrigation Company note.

The next item, November 12, 1926, G. W. Peckham paid the City National Bank $3,050.00. The last deposit of trust funds to G. W. Peckham's account prior to November 12, 1926, was on October 14, 1926, and amounted to $10,000.00. On November 12, 1926, the balance of funds on deposit in G. W. Peckham's account was $18,611.85. Deducting from those funds on deposit the deposit of $10,000.00 above mentioned, and the minimum balance of $128.51 of September 2, 1926, total deduction of $10,128.51, there is left in G. W. Peckham's account $8,483.34 of personal funds with which to pay this $3,050.00 to the City National Bank. The $10,000.00 deposit was for the Wheeler and Gray County royalties, which G. W. Peckham transferred to the Wichita Royalty Company, and which at this time had not been repudiated.

1611

The next item, January 19, 1927, G. W. Peckham paid the City National Bank $2,506.12. Trust funds were deposited on January 19, 1927, to the account of G. W. Peckham, amounting to $2,000.00. On January 19, 1927, the balance on deposit before this deposit of $2,000.00, G. W. Peckham's account was $1,581.41. The total funds on deposit on that date was $1,581.41 personal funds and $2,000.00 of trust funds. On that day he paid the City National Bank the sum of $2,506.12, of which $1,581.41 was on personal funds, and $924.71 was from funds transferred from the Wichita Royalty Company. That is the first time that the transferred funds under the minimum balance rule was used to pay any part of his personal indebtedness. That check for $2,000.00 was payable to the City National Bank, being Wichita Royalty Company's check No. 571, dated January 19, 1927, on which there was a voucher notation, for land improvements. $924.71 of this item on this payment, under the minimum balance rule, came from the transferred funds of $2,000.00.

The next payment, March 16, 1927, G. W. Peckham paid the Wichita Royalty Company $1,500.00. The last deposit of trust funds to G. W. Peckham's account prior

to March 16, 1927, was March 8, 1927, amounting
1612 to $500.00. On March 16, 1927, G. W. Peckham had on deposit in his personal account, $2,158.24. If from that amount you deduct the entire $500.00, deposit above mentioned, together with the minimum balance that existed in his account on March 8, 1927, of $5,672.00, that total deduction of $556.72, there remains $1,601.52 of personal funds on deposit in G. W. Peckham's personal account with which to pay $1,500.00 to the City National Bank.

The next payment he made, on April 23, 1927, G. W. Peckham paid $10,963.75 to the City National Bank, the last deposit of trust funds to G. W. Peckham prior to April 23, 1927, was on March 23, 1927, amounting to $2,000.00. April 23, 1927, G. W. Peckham had on deposit in his personal bank account, $13,118.67. Deducting from that amount the minimum balance of April 2, 1927, which existed in his account and amounted to $10.93, there remained $13,107.74 of personal funds on deposit in G. W. Peckham's personal account with which to pay this $10,963.75 to the City National Bank.

The next payment he made, August 23, 1927, $350.00. The last deposit of trust funds to Mr. Peckham's account prior to August 23, 1927, was August 16, 1927, and amounting to $1,500.00. The balance of funds on deposit in his account on August 23, 1927, $298.90 on personal funds and $1,500.00 of transferred funds. On the date he paid to the City National Bank $350.00, $298.90 of which he paid from personal funds, and $51.10 of which
he paid from funds that had been transferred
1613 from the Wichita Royalty Company account. I will explain the $1,500.00 deposit. By voucher notation it shows to have been given to G. W. Peckham to apply on Wichita Royalty Company obligation by the City National Bank, in that case there was a misappropriation of funds by G. W. Peckham to discharge his personal liabilities, and I arrived at this conclusion by the following facts which I set out. I show on June 18, 1927, the balance of trust funds which should have been in his

account was $10.93, being the minimum balance between March 23, 1927, and June 18, 1927, being the minimum balance on April 2, 1927. Then on June 18, 1927, they issued to George Peckham a check for $1,200.00 to apply on their indebtedness at the bank, and this $1,500.00 he applied on their indebtedness at the bank. Then on October 14, they issued $2,400.00 to apply on their indebtedness at the bank. Then on November 25, they issued him a check for $1,800.00 to apply on their indebtedness at the bank. All of those checks, voucher notations and books of the royalty company show, issued to him, to pay notes payable to the City National Bank. The total is $6,900.00. Mr. Peckham did expend money during that time from his personal account and I exhibit to you the check, Plaintiff's Exhibits 103, 116, 117, and 118, for the respective sums of $500.00, $1,336.00, $1,500.00 and $3,485.33, bearing the dates respectively of August 31, 1927, October 19, 1927, November 25, 1927, and 2-15-28, aggregating a total of $6,821.33. Those checks were issued by G. W. Peckham, drawn on his personal account, and
1614 paid and credited upon the obligation of the Wichita Royalty Company. The difference between the aggregate amount of those checks and the amount of the checks that were issued to Peckham or transferred from the Wichita Royalty Company to Peckham's account, for which voucher notations were made to notes payable at the City National Bank, is $78.67. There would be no use of trust funds on this $350.00 payment.

The next payment, October 19, 1927, G. W. Peckham paid to the City National Bank $520.00. The last deposit of trust funds to G. W. Peckham's account prior to October 19, 1927, was on October 15, 1927, and amounted to $2,400.00. On October 19, 1927, the date the payment was made to the bank, there was on deposit in G. W. Peckham's personal account, $2,222.71. The funds transferred from the Wichita Royalty Company. On this date he paid the City National Bank $520.00, on his personal indebtedness, and this $520.00 was paid from transferred funds.

This $2,400.00 was returned for the purpose for which the transferred funds were issued, and applied to Wichita Royalty Company's indebtedness, that check is signed by E. E. Scannell, payable to the City National Bank, and issued by the Wichita Royalty Company, deposited by Mr. Peckham to his individual credit in the bank. The voucher notations from the books of the royalty company show that check was given to apply on notes payable to the City National Bank. Peckham paid a like sum, except to the extent of $78.00 and some odd cents, that is explained in the previous matter.

1615 On October 19, 1927, he actually paid from his personal account $1,336.00, which was credited on the Wichita Royalty Company note payable to the bank.

The next payment was made on February 15, 1928, G. W. Peckham paid the City National Bank $513.33. On February 15, 1928, there was deposited to G. W. Peckham's account trust funds amounting to $6,000.00. That was not a transfer of funds from the royalty company account to Peckham's individual account. That was a cashier's check indorsed by W. C. Duncan and deposited to G. W. Peckham's personal account. It had no indicia of ownership of the royalty company on it at all. It has been offered in evidence as Plaintiff's Exhibit 146. This $6,000.00 item was a deposit represented by cashier's check on the Wichita State Bank, issued by the Wichita State Bank and Trust Company, payable to W. C. Duncan for that amount, it contains indorsement, payable to the order of G. W. Peckham for Bristow Royalty, W. C. Duncan and is signed and indorsed by G. W. Peckham. This amount represents no transfer of funds from the Wicihta Royalty Company in the City National Bank to Peckham's individual account. The reason I put that analysis in is because they alleged it was trust funds deposited of which the bank had notice. Treating it in the way in which they allege it, there is $178.00 of that $6,000.00 paid from this payment of $513.33, applying the minimum balance rule, however, on that same date Peck-

ham individually paid on the Wichita Company note the sum of $3,485.33.

The next payment, July 20, 1928, G. W. Peck-
1616 ham paid to the City National Bank, $493.78.

The last deposit of trust funds to G. W. Peckham's account prior to July 20, 1928, was on April 20, 1928, amounting to $1,850.00. On July 20, 1928, G. W. Peckham had on deposit in his personal account $3,840.57, deducting from that the minimum balance on June 9, 1928, of $8.10, leaves a balance of $382.48, of personal funds on deposit in G. W. Peckham's personal account, with which to pay the $493.78, to the City National Bank. This item of $1,850.00 was a check issued by the Wichita Royalty Company, being check No. 710, and payable to the City National Bank in that sum, and the voucher notation states, "Notes payable to apply on indebtedness at the City National Bank, interest and principal."

The next payment of $3,163.78 was made on September 27, 1928. Trust funds were deposited to G. W. Peckham's account on September 27, 1928, amounting to $224.66. On September 27, 1928, there were personal funds deposited in his account amounting to $5,013.15, in addition to the $424.66. On that date he had $513.15 of personal funds with which to make this payment of $3,163.78 to the City National Bank.

The next payment, there is a group of them, $424.66, the last transfer of funds prior to George Peckham's death, I have grouped the remainder of the payments.

The remaining payments constitute seven items; on December 4, 1928, he paid $614.50; on January 12, 1929, he paid $2,013.33; on May 11, 1929, he paid $373.76;
1617 on June 24, 1929, he paid $20,214.44; on August 24, 1929, he paid $381.09; on September 2, 1929, he paid $5,000.00; on October 25, 1929, he paid $3,061.00, all of which payments were made by G. W. Peckham out of his personal account to the City National Bank, and the last deposit of trust funds to G. W. Peckham's account prior to any and all of these dates on which payments were made, was on September 27, 1928, and amounted to

$424.66, which amount he, G. W. Peckham, on the same day, from his personal account, paid upon the indebtedness of the Wichita Royalty Company to the City National Bank, the sum of $424.66. That amount is not included in the item that goes to make up the $6,800.00. My analysis of the last item is, none of those seven payments, on his personal obligation to the City National Bank were paid from anything but personal funds. There was no further transfer of trust, royalty company's funds, since September 27, 1928.

All of these payments that were made from the very beginning from 1923 up shortly to the time of George Peckham's death, were made upon personal checks of George Peckham drawn on his personal account in the City National Bank. There were no payments made on his personal indebtedness from checks of the royalty company.

Mr. Humphrey:

We offer in evidence the two EXHIBITS 210 and 210A, as follows:

Analysis of Source of Funds Applied by G. W. Peckham to Pay His Personal Indebtedness to City National Bank, January 1, 1923, to November 17, 1925.

1618 The schedules herein submitted present an analysis of the source of the funds used by G. W. Peckham from his individual account with which to pay his personal indebtedness to the City National Bank, beginning January 1, 1923, and ending on July 7, 1925, which is the last date herein recorded on which G. W. Peckham made a payment on his personal indebtedness to the bank.

In making this analysis, I have adopted what is known as the "Minimum Balance Rule," applying only those funds (against the individual account to the trust) which are clearly earmarked and traceable as trust funds, treat-

ing all other funds withdrawn, and not clearly identified as for trust purposes, as funds used for individual purposes, and, when the trust funds have been reduced or dissipated, treating subsequent deposits of personal funds made in due course of business not as a restoration of trust funds.

In other words I have followed the rule in the case of Maryland Casualty Company v. City National Bank, 29 Fed. (2d) 662, to the effect that when trust money has been deposited in the individual account and it must be determined how much of it remains on a given date, the minimum balance existing between that date and the date of the deposit is the amount remaining and identifiable as a trust fund.

Respectfully submitted,

(Signed) P. H. LAMBERT,
C. P. A.

1619 In Explanation.

In this report I have used the designation "Trust Funds" as synonymous with funds transferred from the account of the Wichita Royalty Company to the individual account of G. W. Peckham and being funds classed by the Wichita Royalty Company as funds of that Company transferred and deposited into the individual account of G. W. Peckham. And in this report I have not undertaken to show whether or not these funds were in fact rightfully transferred or were in fact Trust Funds, except in so far as I have traced the same to its application to the trust purposes by payments made from the individual account of G. W. Peckham and for the benefit of the trust.

In this connection there should be an explanation of two items, one being Eleven Thousand Dollars and the other amounting to Ten Thousand Dollars; the former item of Eleven Thousand Dollars appearing on pages 1418, 1419 and 1420 of the first section of this report. These two

items were checks of the Wichita Royalty Company drawn against its account in the City National Bank and were both made payable to the Security National Bank. Neither of these two checks were deposited in the City National Bank to the credit of G. W. Peckham.

There is also a deposit of Six Thousand Dollars to the credit of G. W. Peckham under date of February 15, 1928, and shown on page 1436 of the second section of this analysis. This item was not a transfer of funds from the Wichita Royalty Company account to the individual account of G. W. Peckham, as this deposit represents the deposit of a cashier's check issued by the Wichita State Bank & Trust Company to W. C. Duncan and indorsed by W. C. Duncan to G. W. Peckham and deposited to the credit of G. W. Peckham. The cashier's check representing this item is listed as Plaintiff's Exhibit No. 146.

1620

The above three items, like all of the other items of alleged "trust funds" herein dealt with, were included in this analysis of G. W. Peckham's bank account because they were alleged in Defendant's cross complaint to be trust funds. And because they were alleged to be trust funds they are herein dealt with as if they were, in fact, trust funds; and this was done irrespective of any controverting facts that might exist.

EXHIBIT "A."

1621 Payments Made From G. W. Peckham's Personal Account on His Personal Indebtedness to the City National Bank from January 1, 1923, to November 17, 1925:

Date Paid	Payments—Principal and Interest	Paid From Trust Funds	Paid From Personal Funds	Minimum Balance and Analysis
2- 6-23	$ 594.75		$ 594.75	Page 1
3- 5-23	1,000.00		1,000.00	2
3- 6-23	500.00		500.00	2
3- 8-23	500.00		500.00	2

3- 8-23	500.00		500.00	2
4-23-23	4,094.15		4,094.15	3
5-15-23	1,008.55		1,008.55	4
6-22-23	3,050.60		3,050.60	5
8-10-23	3,985.78		3,985.78	5
11-13-23	1,000.00		1,000.00	5
11-20-23	2,000.00		2,000.00	5
11-22-23	1,000.00		1,000.00	5
11-30-23	1,555.82		1,555.82	5
2- 5-24	67.67		67.67	6
2-21-24	8,022.28*		8,022.28	7
3-17-24	10,000.00		10,000.00	8
3-18-24	10,026.75**		10,026.75	9
5- 1-24	2,048.07		2,048.07	10
6- 7-24	4,027.47		4,027.47	11
6- 7-24	1,000.00		1,000.00	11
6-11-24	234.22		234.22	12
7- 3-24	967.67		967.67	13
8- 2-24	58.77		58.77	14
8- 5-24	117.56		117.56	14
10-30-24	12,500.00		12,500.00	15
11- 3-24	5,100.00		5,100.00	16
11-10-24	200.00		200.00	16
11-29-24	15,069.99		15,069.99	16
12-13-24	12,016.00		12,016.00	16
2- 5-25	10,200.00		10,200.00	17
2-18-25	15,210.00		15,210.00	17
4- 7-25	12,162.66		12,162.66	17
4- 7-25	80.00		80.00	17
5-12-25	4,056.00		4,056.00	18
6- 6-25	220.00		220.00	18
6-11-25	66.67		66.67	18
7- 7-25	12,072.00		12,072.00	19
Totals	$156,313.43		$156,313.43	

*Note—$3,000.00 of this item applied to Griswold Note Number 46922.

**Note—$10,026.75 of this item applied to W. H. Peckham Note Number 47675.

1622 EXHIBIT "B."

Analysis of G. W. Peckham's Indebtedness to City National Bank.

Notes Payable to City National Bank at 1-1-23			$7,094.75
Year 1923—			
Borrowed:			
4-17-23	$1,000.00		
4-25-23	3,000.00		
6-27-23	4,000.00		
10-17-23	5,500.00		
12- 3-23	5,000.00	$18,500.00	
Interest Charges		262.57	$18,762.57
Payments to City National Bank			20,789.65
Net Reduction			2,027.08
Balance at 1-1-24			$5,067.67
Year 1924—			
Borrowed:			
3- 6-24	$10,000.00		
4- 1-24	7,000.00		
5- 7-24	4,000.00		
6- 5-24	1,000.00		
6-11-24	5,000.00		
6-19-24	10,000.00		
10-28-24	12,500.00		

11- 8-24	15,000.00		
12- 6-24	12,000.00		
12-17-24	15,000.00	$91,500.00	
Less—Fain Reduction (7-3-24)		5,000.00	
		$86,500.00	
Interest Charges		2,062.03	$88,562.03
Payments to City National Bank			68,429.70
Net Increase			20,132.33
Balance at 1-1-25			$25,200.00

Year 1925 to November 17th—

Borrowed:			
1- 6-25	$12,000.00		
3-10-25	4,000.00		
4- 6-25	15,000.00		
4- 9-25	6,500.00		
5-22-25	6,000.00		
6-11-25	12,000.00	$55,500.00	
Interest Charges		867.33	$56,367.33
Payments to City National Bank			54,067.33
Net Increase			2,300.00
Balance Due City National Bank at November 17, 1925			$27,500.00

1623 Paid to the City National Bank on February 6, 1923 ..... $594.75

	Personal Funds	Trust Funds
The last deposit of trust funds to the account of G. W. Peckham, prior to February 6, 1923, was on January 16, 1923, amounting to		$1,040.00

Analysis of Funds in G. W. Peckham's account on February 6, 1923.

	Amounts
2-6-23 Total funds on Deposit—Opening Balance	$3,532.35
2-6-23 Deposit of Personal Funds	629.30
Total	$4,161.65
Deduct:	
Maximum posible trust funds on deposit in this account at 2-6-23 (Minimum balance on 2-2-23)	244.53
2-6-23 Personal Funds on Deposit	$3,917.12
2-6-23 Paid to City National Bank (from Personal Funds)	594.75

1624 Paid to the City National Bank:

On March 5, 1923	$1,000.00
On March 6, 1923	500.00
On March 8, 1923	500.00
On March 8, 1923	500.00

	Personal Funds	Trust Funds
The last deposit of trust funds to the account of G. W. Peckham, prior each of the above dates, was on February 21, 1923, amounting to		$1,046.66

Analysis of Funds in G. W .Peckham's Account on March 5th, 6th, and 8th, 1923.

	At 3-5-23	At 3-6-23.	At 3-8-23.
Funds on Deposit	$5,068.62	$3,233.54	$4,619.84
Less—Above deposits of trust funds on 2-21-23	1,046.66	1,046.66	1,046.66
Personal Funds on Deposit	$4,021.96	$2,186.88	$3,573.18
Paid to City National Bank (from Personal Funds)	1,000.00	500.00	1,000.00

1625 Paid to the City National Bank on April 23, 1923 ..... $4,094.15

	Personal Funds	Trust Funds
The last deposit of funds from Wichita Royalty Company to the account of G. W. Peckham prior to April 23, 1923, was on April 10, 1923, and amounted to		$2,516.67
These funds were applied by G. W. Peckham on April 10, 1923, to their contemplated trust purpose as set forth in escrow agreement No. 1663, covering the purchase of Wichita Royalty Company Property No. 71—Principal and interest paid		2,516.67

4-23-23 Balance on Deposit—Peckham's account	$5,046.25
4-23-23 Paid to City National Bank (from Personal Funds)	4,094.15

Note—The minimum balance between April 10th and April 23,,1923, was $316.63 on April 11th.

1626 Paid to the City National Bank on May 15, 1923 ..... $1,008.55

	Personal Funds	Trust Funds
The last deposit of funds from Wichita Royalty Company to the account of G. W. Peckham prior to May 15, 1923, was on May 11, 1923, amounting to		$2,533.33
These funds were applied by G. W. Peckham on May 15, 1923, to their contemplated trust purpose as set forth in escrow agreement No. 1663, covering the purchase of Wichita Royalty Company Property No. 71—Principal and Interest paid		2,533.33
5-15-23 Balance on Deposit—Peckham account	$7,492.63	
5-15-23 Paid to City National Bank (from Personal Funds)	1,008.55	
Note—The maximum possible trust funds on deposit at 5-15-23 would be	2,533.33	
The minimum possible personal funds on deposit at 5-15-23 would be	4,959.30	

1627 Paid to the City National Bank:

On June 22, 1923	$3,050.60
On August 10, 1923	3,985.78
On November 13, 1923	1,000.00
On November 20, 1923	2,000.00
On November 22, 1923	1,000.00
On November 30, 1923	1,555.82

No trust funds were deposited to the account of G. W. Peckham between May 11, 1923, and January 19, 1924, The last deposit of such funds prior to each and all of the above payments was on May 11, 1923, and was fully accounted for on that date.

It is therefore evident that all of the above payments made to the City National Bank were from G. W. Peckham's personal funds, on deposit in his personal bank account.

Note: Minimum balance from May 11, 1923, to June 22, 1923, was on June 16	$253.85
To August 10, 1923, was on June 23	37.99
To November 13, 1923, was on June 23	37.99
To November 20, 1923, was on June 23	37.99
To November 22, 1923, was on June 23	37.99
To November 30, 1923, was on June 23	37.99

1628 Paid to the City National Bank on February 5, 1924 ..... $67.67

	Personal Funds	Trust Funds
The last Deposit of Trust funds to the account of G. W. Peckham, prior to February 2, 1924, was on February 2, 1924, when the Wichita Royalty Company made an advance on the purchase price of their 1/64 interest in the Wilson Royalty. This advance amounted to		$12,000.00
G. W. Peckham acquired this royalty and on April 22, 1924 conveyed same to the Wichita Royalty Company, thereby discharging in full the trust purpose of the above sum of		$12,000.00
Funds on Deposit at February 5, 1924	$2,593.62	

No other Trust funds being present in the account of G. W. Peckham on February 5, 1924, it is evident that the above payment of $67.67 was made, in effect and in fact, from his personal funds.

1629 Paid to the City National Bank on February 21, 1924 ..... $8,022.28

	Personal Funds	Trust Funds
The last deposit of trust funds to the account of G. W. Peckham, prior to February 21, 1924, was on February 11, 1924, amounting to		$2,500.00

Analysis of Funds in G. W. Peckham's account on February 21, 1924.

	Amounts
2-21-24 Total Funds on Deposit	$15,936.79
Deduct: Maximum possible trust funds in this account on 2-21-24 (Minimum Balance on 2-10-24)	1,398.93
2-21-24 Personal Funds on Deposit	$14,537.86
2 21-24 Paid to City National Bank (from Personal Funds)	8,022.28

1630 Paid to the City National Bank on March 17, 1924 ..... $10.000.00

	Personal Funds	Trust Funds
The last deposit of trust funds to the account of G. W. Peckham, prior to March 17, 1924, was on February 9, 1924, amounting to		$2,500.00

Analysis of Funds in G. W. Peckham's Account on March 17, 1924.

		Amounts
3-17-24	Funds on Deposit—Opening Balance	$10,466.33
3-17-24	Deposit of Personal Funds	10,625.00
3-17-24	Total funds on Deposit	$21,091.33
	Deduct: Maximum possible trust funds in this account on 3-17-24 (Minimum Balance on 2-19-24)	1,398.93
	3-17-24 Personal Funds on Deposit	$19,692.40
	3-17-24 Paid to City National Bank (from Personal Funds)	10,000.00
1631	Paid to the City National Bank on March 18, 1924	$10,026.75

	Personal Funds	Trust Funds
On the above date, March 18, 1924, trust funds were deposited to the account of G. W. Peckham in the sum of		$9,250.00*

(This was the first such deposit since 2-9-24.)

Analysis of Funds in G. W. Peckham's Account on March 18, 1924.

		Amount
3-18-24	Funds on Deposit—Opening Balance	$11,033.48
Add:—Deposits:		
3-18-24	Deposit of Personal Funds	$78,750.00
3-18-24	Deposit of Trust Funds	9,250.00
	Total Funds	$99,033.48

Deduct: Deposit of Trust Funds (Above)	9,250.00
3-18-24 Personal Funds on Deposit	$89,783.48
3-18-24 Paid to City National Bank (from Personal Funds)	10,026.75

*Note.—Attention is called to the further fact that this item of $9,250.00 represents the balance of the purchase price of the 1/64 royalty interest in the Wilson Royalty bought by the Wichita Royalty Company, G. W. Peckham acquired this royalty company.

1632 Paid to the City National Bank on May 1, 1924 ..... $2,048.07

	Personal Funds	Trust Funds
The last Deposit of Trust funds to the account of G. W. Peckham, prior to May 1, 1924, was on March 18, 1924, amounting to		$9,250.00

Analysis of Funds in G. W. Peckham's Account on May 1, 1924.

	Amount
5-1-24 Total Funds on Deposit	$4,874.60
Deduct: Maximum possible trust funds on deposit on May 1, 1924 (Minimum balance on 3-27-24)	457.19
5-1-24 Personal Funds on Deposit	$4,417.41
5-1-24 Paid to City National Bank (from Personal Funds)	2,048.07

1633 Paid to the City National Bank:

On June 7, 1924	$4,027.47
On June 7, 1924	1,000.00

	Personal Funds	Trust Funds
The last deposit of trust funds to the account of G. W. Peckham, prior to June 7, 1924, was on March 18, 1924, amounting to		$9,250.00

Analysis of Funds in G. W. Peckham's Account on June 7, 1924.

	Amounts
6-7-24—Funds on Deposit—Opening Balance	$1,256.39
6-7-24 Add—Deposit of Personal Funds	5,000.00
Total	$6,256.39
Deduct: Maximum possible trust funds on deposit in this account on 6-7-24 (Minimum balance on 3-27-24)	457.19
6-7-24 Personal Funds on Deposit	$5,799.20
6-7-24 Paid to City National Bank (from Personal Funds)	5,027.47
1634 Paid to the City National Bank on June 11, 1924	$234.22

	Personal Funds	Trust Funds
The last deposit of trust funds to the account of G. W. Peckham, prior to June 11, 1924, was on March 18, 1924, amounting to		$9,250.00

Analysis of Funds in G. W. Peckham's Account on June 11, 1924.

	Amounts
6-11-24 Total Funds on Deposit	$1,136.72
Deduct: Maximum possible trust funds on deposit in this account on 6-11-24 (Minimum balance on 3-27-24)	457.19
6-11-24 Personal Funds on Deposit	$679.53
6-11-24 Paid to City National Bank (from Personal Funds)	234.22
1635 Paid to the City National Bank on July 3, 1924	$967.67

	Personal Funds	Trust Funds
On the above date, July 3, 1924, trust funds were deposited in the account of G. W. Peckham, and amounting to		$11,000.00**

Analysis of Funds in G. W. Peckham's Account on July 3, 1924.

	Amount	
7-3-24 Funds on Deposit—Opening Balance		$7,469.08
7-3-24 Add—Deposit of Trust Funds	$11,000.00	
7-3-24—Deposit of personal Funds ..	321.82	11,321.82
Total		$18,790.90
Deduct—Trust Funds on Deposit (Above)		11,000.00
7-3-24 Personal Funds on Deposit ...		7,790.90
7-3-24 Paid to City National Bank (From Personal Funds)		967.67

**Note: For an explanation of this $11,000.00 item which appears on this page and the next three pages,

please be referred to the explanation set out on the page immediately following the transmittal letter accompanying this report.

1636 Paid to the City National Bank:

On August 2, 1924	$58.77
On August 5, 1924	117.56

	Personal Funds	Trust Funds
The last deposit of trust funds to the account of G. W. Peckham, prior to August 2 or August 5, 1924, was on July 3, 1924, amounting to		$11,000.00

Analysis of Funds in G. W. Peckham's Account on August 2nd and 5th, 1924.

	Amounts 8-2-1924.	8-5-1924.
Total Funds on Deposit	$14,380.31	$16,452.34
Deduct: Maximum possible trust funds on deposit in this account on either of these dates (Minimum balance on 7-23-24)	9,241.65	9,241.65
Personal Funds on Deposit	$5,138.66	$7,210.69
Paid to City National Bank (from Personal Funds)	58.77	117.56

Note: See the footnote on page 1418.

1637 Paid to the City National Bank on October 30, 1924 ..... $12,500.00

	Personal Funds	Trust Funds
The last deposit of trust funds to the account of G. W. Peckham, prior to October 30, 1924, was on July 3, 1924, amounting to		$11,000.00

Analysis of Funds in G. W. Peckham's Account on October 30, 1924.

	Amount
10-30-24 Funds on Deposit—Opening Balance	$1,284.29
10-30-24 Add—Deposit of Personal Funds ...	12,563.74
Total	$13,848.03
Deduct: Maximum possible trust funds on deposit in this account on 10-30-24 (Minimum balance on 10-27-24)	667.68
10-30-24—Personal Funds on Deposit	$13,180.35
10-30-24 Paid to City National Bank (from Personal Funds)	12,500.00

Note: See the footnote on page 1418.

1638 Paid to the City National Bank:

On November 3, 1924	$5,100.00
On November 10, 1924	200.00
On November 29, 1924	15,069.99
On December 13, 1924	12,016.00

	Personal Funds	Trust Funds
The last deposit of trust funds to the account of G. W. Peckham, prior to each of the above dates, was on July 3, 1924, amounting to ...		$11,000.00

Analysis of Funds in G. W. Peckham's Account on each of the Above Dates.

	At 11-3-24.	At 11-10-24.	At 11-29-24.	At 12-13-24.
Funds on Deposit	$6,138.95	$14,816.00	$18,383.27	$16,594.02
Deduct: Maximum possible trust funds on deposit, being the minimum balance on deposit at:				
10-28-24 ...	626.18			
10- 7-24 ...		2.00	2.00	2.00
Personal funds on deposit	$5,512.77	$14,814.00	$18,381.27	$16,592.02
Paid to City National Bank (from Personal Funds)	5,*1000*.00	200.00	15,069.99	12,016.00

Note: See the footnote on page 1418.

1639 Paid to the City National Bank:

On February 5, 1925		$10,200.00
On February 18, 1925		15,210.00
On April 7, 1925	$12,162.66	
On April 7, 1925	80.00	12,242.66

	Trust Funds
The last deposit of trust funds to the account of G. W. Peckham, prior to each of the above dates, was on December 23, 1924, amounting to	$695.00

Analysis of Funds in G. W. Peckham's Account on each of the Above Dates.

	At 2-5-25.	At 2-18-25.	At 4-7-25.
Funds on Deposit	$14,400.22	$20,812.14	$39,029.79
Less: The maximum possible trust funds on deposit in this account (above item 12-23-24)	695.00	695.00	695.00
Personal Funds on Deposit	$13,705.22	$20,126.14	$38,334.79
Paid to City National Bank (from Personal Funds)	10,200.00	15,210.00	12,242.66

1640 Paid to the City National Bank:

On May 12, 1925	$4,056.00
On June 6, 1925	220.00
On June 11, 1925	66.67

	Personal Funds	Trust Funds
The last deposit of trust funds to the account of G. W. Peckham, prior to May 12, or June 6, or June 11, 1925, was on May 5, 1925 amounting to		$2,500.00
5-6-25—G. W. Peckham acquired for the Wichita Royalty Company their property No. 79, being the property for which the above funds were designated to purchase. For this property and in pursuance of the trust purpose, G. W. Peckham paid Ray and Massie the sum of		2,500.00

5-12-25 Funds on Deposit	$5,451.37	
5-12-25 Paid to City National Bank (from Personal Funds)	4,056.00	
6-6-25 Funds on Deposit	1,919.04	
6-6-25 Paid to City National Bank (from Personal Funds)	220.00	
6-11-25 Funds on Deposit	602.54	
6-11-25 Paid to City National Bank (from Personal Funds)	66.67	

1641 Paid to the City National Bank on July 7, 1925 ..... $12,072.00

	Personal Funds	Trust Funds
The last deposit of funds from Wichita Royalty Company into the account of G. W. Peckham, prior to July 7, 1925, was made on June 29, 1925, and was for the purchase of Company's property No. 80. The payment to Peckham, and part of the purchase price of this property, amounted to		$5,000.00
On July 1st and 20th, 1925, G. W. Peckham conveyed to the Wichita Royalty Company the properties for which the above funds were intended to acquire, thereby applying said funds to their contemplated purpose		5,000.00
7-7-25 Funds on Deposit	$20,198.42	
7-7-25 Paid to City National Bank (from Personal Funds)	12,072.00	

1642 PLAINTIFF'S EXHIBIT 210a.

Analysis of Source of Funds applied by G. W. Peckham to Pay his Personal Indebtedness to City National Bank.

November 17, 1925 to October 25, 1929.

1643 The schedules herein submitted present an analysis of the source of the funds used by G. W. Peckham from his individual account with which to pay his personal indebtedness to the City National Bank, beginning November 17, 1925, and ending on October 25, 1929, which was the last date on which G. W. Peckham made a payment on his personal indebtedness to the bank.

In making this analysis, I have adopted what is known as the "Minimum Balance Rule," applying only those funds (against the individual account to the trust) which are clearly earmarked and traceable as trust funds, treating all other funds withdrawn and not clearly identified as for trust purposes, as funds used for individual purposes, and, when the trust funds have been reduced or dissipated, treating subsequent deposits of personal funds made in due course of business not as restoration of trust funds.

In other words, I have followed the rule in the case of Maryland Casualty Company v. City National Bank, 29 Fed. (2d) 662, to the effect that when trust money has been deposited in the individual account and it must be determined how much of it remains on a given date, the minimum balance existing between that date and the date of the deposit is the amount remaining and identifiable as a trust fund.

Respectfully submitted,

(Signed) P. H. LAMBERT, C. P. A.

1644 In Explanation.

In this report I have used the designation "Trust Funds" as synonomous with funds transferred from the account of the Wichita Royalty Company to the individual account of G. W. Peckham and being funds classed by the Wichita Royalty Company as funds of that Company transferred and deposited into the individual account of G. W. Peckham. And in this report I have not undertaken to show whether or not these funds were in fact rightfully transferred or were in fact Trust Funds, except in so far as I have traced the same to its application to the trust purposes by payments made from the individual account of G. W. Peckham and for the benefit of the trust.

In this connection there should be an explanation of two items, one being Eleven Thousand Dollars and the other amounting to Ten Thousand Dollars; the former item of Eleven Thousand Dollars appearing on pages 1418, 1419 and 1420 of the first section of this report. These two items were checks of the Wichita Royalty Company drawn against its account in the City National Bank and were both made payable to the Security National Bank. Neither of these two checks was deposited in the City National Bank to the credit of G. W. Peckham.

There is also a deposit of Six Thousand Dollars to the credit of G. W. Peckham under date of February 15, 1928, and shown on page 1436 of the second section of this analysis. This item was not a transfer of funds from the Wichita Royalty Company account to the
1645 individual account of G. W. Peckham, as this deposit represents the deposit of a cashier's check issued by the Wichita State Bank & Trust Company to W. C. Duncan and indorsed by W. C. Duncan to G. W. Peckham and deposited to the credit of G. W. Peckham. The cashier's check representing this item is listed as Plaintiff's Exhibit No. 146.

The above three items, like all of the other items of alleged "Trust Funds" herein dealt with, were included

in this analysis of G. W. Peckham's bank account because they were alleged in defendant's cross complaint to be trust funds. And because they were alleged to be trust funds they are herein dealt with as if they were, in fact, trust funds; and this was done irrespective of any controverting facts that might exist.

1646 EXHIBIT "A."

Payments Made From G. W. Peckham's Personal Account on His Personal Indebtedness to the City National Bank From November 17, 1926, to October 25, 1929.

Date Paid	Payments—Principal and Interest	Paid From Trust Funds	Paid From Personal Funds	Minimum Balance and Analysis
11-17-25	$1,007.23		$1,007.23	Page 1
2-13-26	550.00		550.00	2
5-15-26	550.00		550.00	3
8-10-26	550.00		550.00	4
9-30-26	503.10		503.10	5
11-12-26	3,050.00		3,050.00	6
1-19-27	2,506.12	$924.71	1,581.41	7
3-16-27	1,500.00		1,500.00	8
4-23-27	10,963.75		10,963.75	9
8-23-27	350.00		350.00	10
10-19-27	520.00		520.00	11
2-15-28	513.33	178.00	335.33	12
7-20-28	493.78		493.78	13
9-27-28	3,163.78		3,163.78	14
12-14-28	614.50		614.50	15
1-12-28	2,013.33		2,013.33	15
5-11-29	373.76		373.76	15
6-24-29	20,214.44		20,214.44	15
8-24-29	381.09		381.09	15
9- 2-29	5,000.00		5,000.00	15
10-25-29	3,061.00		3,061.00	15
Totals	$57,879.21	$1,102.71	$56,776.50	

1647

EXHIBIT "B."

Analysis of G. W. Peckham's Indebtedness to City National Bank.

Notes Payable to City National Bank at 11-17-25			$27,500.00
Interest to 1-1-26		$1,557.23	
Less: 11-17-25 Payment		1,007.23	550.00
Balance at 1-1-26			$28,050.00
Year 1926—			
Payments to City National Bank		$5,203.10	
Less:			
Borrowed on 9-2-26	$ 500.00		
Interest Charged	2,153.10	2,653.10	
Net Reduction			2,550.00
Balance at 1-1-27			$25,500.00
Year 1927—			
Payments to City National Bank		$15,839.87	
Less:			
Borrowed: 1- 8-27	$2,500.00		
1-24-27	3,000.00		
4-29-27	1,000.00		
7-21-27	1,000.00		
	$7,500.00		
Interest Charges	1,309.87	8,809.87	
Net Reduction			7,030.00
Balance at 1-1-28			$18,470.00

Year 1928—			
Payments to City National Bank		$4,785.39	
Less: Borrowed on 11-1-28	$3,100.00		
Deduct—Paid on 11-19-28	2,500.00		
	600.00		
Interest Charges	1,628.72	2,228.72	
Net Reduction			2,556.67
Balance at 1-1-29			$15,913.33
Year 1929 to October 25th—			
Borrowed:			
4-23	$10,000.00		
5- 4	5,000.00		
5-23	5,000.00		
6- 8	5,000.00		
7- 6	2,500.00		
7-10	7,500.00		
7-23	500.00		
8-30	2,000.00		
9-12	1,000.00	$38,500.00	
Interest Charges	1,604.71	$40,104.71	
Less—Payments to City National Bank		31,043.62	
Net Increase			9,061.09
Balance Due City National Bank at 10-25-29			$24,974.42

1648 Paid to the City National Bank on November 17, 1925 ..... $1,007.23

	Personal Funds	Trust Funds
The last deposit of Trust funds prior to November 17, 1925, was made on October 8, 1925, amounting to		$5,500.00
10-8-25 Balance of Personal funds on Deposit	$237.48	

Disbursements From Trust Funds.

10-19-25—To Purchase Property No. 81—(Draft) ...	$2,252.25	
10-23-25—To Purchase Property—Revenue Stamps.	2.50	
10-26-25—To Purchase Property—Commission Paid.	225.00	
11-3-25—To Purchase Property—Legal Expense ...	25.00	
11-13-25—To Purchase Property No. 82 Check	1,500.00	
11-10-25—Funds Returned to Wichita Royalty Co.....	1,500.00	
Total Trust Funds Applied to Trust Purposes		5,504.75
11-17-25—Balance on Deposit Peckham's Account	$3,216.76	None
11-17-25—Payment to City National Bank (From Personal Funds)	1,007.23	—o—

Note:—The minimum balance between October 8, 1925, and November 17, 1925, was $604.40 on November 2, 1925.

1649 Paid to the City National Bank on February 13, 1926 ..... $550.00

	Personal Funds	Trust Funds
The last Deposit of Trust Funds to G. W. Peckham's account, prior to February 13, 1926, was on January 18, 1926, amounting to.....		$15,769.07

Analysis of Funds in G. W. Peckham's Account on February 13, 1926.

2-13-26—Balance on Deposit.	$22,750.27	
Deduct:		
Balance on Deposit at 1-18-26....	$2,996.80	
Deposit (above) on 1-18-26...	15,769.07	18,765.87
2-13-26—Minimum Personal Funds on Deposit	3,984.40	
2-13-26—Payment to City National Bank (From Personal Funds)	550.00	

Note: The minimum balance between January 18, 1926, and February 13, 1926, was $1,801.71 on February 3rd.

1650 Paid to the City National Bank on May 15, 1926 ..... $550.00

	Personal Funds	Trust Funds
The last Deposit of Trust Funds to G. W. Peckham's account, prior to May 15, 1926, was on March 31, 1926, amounting to		$7,500.00

On April 15, 1926, Paid from his personal account to the Marlborough Addition, as contemplated in the above deposit, the sum of		7,500.00
5-15-26—Balance on Deposit—Peckham's account	$916.57	
5-15-26—Payment to City National Bank (From Personal Funds)	550.00	

Note: The minimum Balance between March 31, 1926, and May 15, 1926, was $187.48 on May 5th.

1651 Paid to the City National Bank on August 10, 1926		$550.00
	Personal Funds	Trust Funds
The last Deposit of Trust Funds to G. W. Peckham's account, prior to August 10, 1926, was August 2, 1926, amounting to		$4,000.00
On August 10, 1926, with no intervening application of Trust Funds to Trust Purposes the balance Peckham's Account was	—o—	3,628.93
8-10-26—Paid to City National Bank (from Trust Funds that were subsequently returned to their intended purpose on 10-15-26)...		550.00

Note: This $4,000.00 deposit of Trust Funds was fully accounted for on October 15, 1926, when Peckham applied same to the contemplated Trust purpose.

1652 Paid to City National Bank on September 30, 1926 ..... $503.10

	Personal Funds	Trust Funds
The last Deposit of Trust Funds to G. W. Peckham's account, prior to September 30, 1926, was on August 27, 1926, amounting to..		$4,357.58
On September 30, 1926, with No intervening application of Trust Funds to Trust Purposes the balance in Peckham's account was..	$5,939.47	128.51
9-30-26—Paid to City National Bank (From Personal Funds)	501.10	

Note: The minimum balance of Peckham's account between August 27, 1926, and September 30, 1936, was $128.51 on September 2nd.

The above $4,357.58 deposit of Trust Funds was fully accounted for on October 15, 1926, when Peckham applied same to their contemplated Trust purpose.

1653 Paid to the City National Bank on November 12, 1926 ..... $3,050.00

	Personal Funds	Trust Funds
The last Deposit of Trust Funds to G. W. Peckham's account, prior to November 12, 1926, was on October 14, 1926, amounting to		$10,000.00

Analysis of Funds in G. W. Peckham's Account on November 12, 1926.

	Amounts
11-12-26—Balance on Deposit—Total Funds	$18,611.85

Deduct:		
Deposit of Trust Funds 10-14-26 (above)	$10,000.00	
Trust Funds on Hand on this account at 10-14-26 (Maximum amount being the 9-2-26 minimum balance)	128.51	10,128.51
Balance—All Personal Funds		$8,483.34
11-12-26—Paid to City National Bank (From Personal Funds)		3,050.00

Note: The above $10,000.00 deposit of Trust Funds was fully accounted for in October and November, 1926, when Peckham applied same to the contemplated Trust purpose.

1654 Paid to the City National Bank on January 10, 1927		$2,506.12
	Personal Funds	Trust Funds
Trust Funds were deposited on January 19, 1927, to the account of G. W. Peckham, amounting to		$2,000.00
1-19-27—Balance on Deposit before above deposit of Trust Funds	$1,581.41	
1-19-27—Total Funds on Deposit	$1,581.41	$2,000.00
1-19-27—Paid to City National Bank the sum of $2,506.12 as follows	$1,581.41	924.71*
1655 Paid to the City National Bank on March 16, 1927		$1,500.00
	Personal Funds	Trust Funds
The last Deposit of Trust Funds to G. W. Peckham's account, prior to March 16, 1927, was on March 8, 1927, amounting to		$500.00

Analysis of Funds in G. W. Peckham's Account on March 16, 1927.

		Amounts
3-16-27—Total Funds on Deposit....		$2,158.24
Deduct:		
Above Deposit on 3-8-27.....	$500.00	
Maximum possible Trust Funds in this account on 3-8-27 (minimum balance on 3-8-27).....	56.72	556.72
3-16-27—Personal Funds on Deposit		$1,601.52
3-16-27—Paid to City National Bank (From Personal Funds)		1,500.00

1656 Paid to City National Bank on April 23, 1927 ..... $10,963.75

	Personal Funds	Trust Funds
The last deposit of Trust Funds to G. W. Peckham's account prior to April 23, 1927, was on March 23, 1927, amounting to		$2,000.00

Analysis of Funds in G. W. Peckham's Account on April 23, 1927.

	Amounts
4-23-27—Total Funds on Deposit	$13,118.67
Deduct:	
Maximum possible Trust Funds in this account on 4-23-27 (Minimum balance on 4-2-27)	10.93
4-23-27—Personal Funds on Deposit..	$13,107.74
4-23-27—Paid to City National Bank (From Personal Funds)	10,963.75

1657	Paid to City National Bank on August 23, 1927	$350.00

	Personal Funds	Trust Funds
The last deposit of Trust Funds to G. W. Peckham's account prior to August 23, 1927, was on August 16, 1927, amounting to		$1,500.00
8-23-27—Balance of Funds on Deposit	$298.90	$1,500.00
8-23-27—Paid to City National Bank from mingled funds $350.00 as follows	298.90	51.10*

Note:—The above $1,500.00 deposit is alleged to have been given to Peckham to apply on Wichita Royalty Company's obligation of at City National Bank. In such case there was no misappropriation of trust funds by G. W. Peckham to discharge his personal liability. This conclusion is substantiated by the following facts:

6-18-27—Trust Funds in Peckham's account (Being the minimum balance between 3-23-27, the date of the last previous deposit of trust funds, and 6-18-27, Minimum balance on 4-2-27).....	10.93
6-18-27—Deposit of Trust Funds (To pay Bank Note)	$1,200.00
8-16-27—Next Deposit of Trust Funds (Do)..	1,500.00
10-14-27—Next Deposit of Trust Funds (Do)...	2,400.00
11-25-27—Next Deposit of Trust Funds (Do)...	1,800.00
(There was no further deposit of trust funds to G. W. Peckham's account to apply on said Royalty Company's Note at City National Bank until on April 20, 1928).	
Total Funds Give Peckham with the specific trust purpose of paying on City National Notes	$6,900.00

Applied by Peckham as follows:

8-31-27—Paid City National Bank on Royalty Co. obligations		$ 500.00
10-19-27—	Do	1,336.00
11-25-27—	Do	1,500.00
2-15-28—	Do	3,485.33
Total Application		$6,821.33

On 2-15-28 G. W. Peckham had on Deposit Unexpended Trust Funds $78.67

1658 Paid to City National Bank on October 19, 1927 ..... $520.00

	Personal Funds	Trust Funds
The last deposit of Trust Funds to G. W. Peckham's account prior to October 19, 1927, was on October 15, 1927, amounting to		$2,400.00
10-19-27—Balance of Funds on Deposit	—o—	$2,222.71
10-17-27—Paid to City National Bank (From Trust Funds)		520.00*

*Note—This item was not appropriated to G. W. Peckham's personal use—for details see notation and explanation on Page 1435.

1659 Paid to the City National Bank on February 15, 1928 ..... $513.33

	Personal Funds	Trust Funds
On February 15, 1928, there was deposited to G. W. Peckham's account, Trust Funds amounting to		$6,000.00
Less: Commissions Paid White and Duncan	$300.00	300.00
	$300.00	$5,700.00

At the time of the above deposit there was a balance in Peckham's account of	35.33	
2-15-28—Funds on Deposit	$335.33	$5,700.00
2-15-28—Paid to City National Bank (From mixed Funds).....	335.33	178.00

Note: For explanation of this $6,000.00 item please be referred to the explanation set out on the page immediately following the transmittal letter accompanying this report.

1660 Paid to City National Bank on July 20, 1928 ..... $493.78

	Personal Funds	Trust Funds
The last deposit of Trust Funds to G. W. Peckham's account prior to July 20, 1928, was on April 20, 1928, amounting to		$1,850.00

Analysis of Funds in G. W. Peckham's Account on July 20, 1928.

	Amounts
7-20-28—Total Funds on Deposit	$3,840.57
Deduct: Maximum possible Trust Funds in this account on 7-20-28 (Minimum balance on 6-9-28)....	8.10
7-20-28—Personal Funds on Deposit	$3,832.47
7-20-28—Paid to City National Bank (From Personal Funds)	493.78

1661 Paid to the City National Bank on September 27, 1928 ..... $3,163.78

	Personal Funds	Trust Funds
Trust Funds were deposited to G. W. Peckham's account on September 27, 1928, amounting to		$424.66

9-27-28—Personal Funds on Deposit at time of above deposit....	$5,013.15		
9-27-28—Total Funds on Deposit.....	$5,013.15	$424.66	
9-27-28—Paid to City National Bank (From Personal Funds)....	3,163.78	-o-	

1662 Paid to the City National Bank:

On December 4, 1928.....$	614.50
On January 12, 1929	2,013.33
On May 11, 1929	373.76
On June 24, 1929	20,214.44
On August 24, 1929.....	381.09
On September 2, 1929....	5,000.00
On October 25, 1929	3,061.00

The last deposit of Trust Funds to G. W. Peckham's account, prior to any and all of the above dates, was on September 27, 1928, amounting to $424.66

On the same date, G. W. Peckham, from his personal account, paid the above funds to the City National Bank for the account of the Wichita Royalty Company 424.66

It is therefore apparent that each of the above payments were made from G. W. Peckham's personal funds and from an account in which no trace of Trust Funds remained.

1663 Calling attention to Plaintiff's Exhibit 210, on page 1421, I show a minimum balance of $2.00 existing on 10-7-24, and then an analysis of the payment on page 1422 where I treated the total funds as trust funds, $695.00, I do not bring the minimum balance of $2.00 forward in that item—in other words, I did not accumulate the minimum balance of the so-called trust funds in schedules 210 and 210a. I have made a schedule wherein

I have accumulated the minimum balance to those trust funds, applying the minimum balance rule as defined in Maryland Casualty Company, 29 F (2) Exhibits 210 and 210a, they represent the rule as laid down in that case. I have a schedule wherein I accumulate the minimum balance with subsequent deposits of so-called trust funds.

Plaintiff's Exhibit 211 represents an assembled statement in tabular form, of the analysis of source of moneys used by G. W. Peckham to pay his personal debts to the City National Bank, and in making the analysis of Mr. Peckham's account, the minimum balance referred to was in this instance, as well as in the preparation of Plaintiff's Exhibits 210 and 210a, except that in this Exhibit 211 the accumulated trust funds were brought forward from transaction to transaction. In other words, this running statement of the trust funds in Mr. Peckham's account, during the period of his administration from 1923 until his death in 1929, accumulating trust funds under the minimum balance rule. Taking page 1638 of Plaintiff's Exhibit 210, where I show a minimum balance of $2.00, in Plaintiff's Exhibit 211, I have carried
that $2.00 and added it to the subsequent deposit
1664 of $695.00 which would make a minimum balance of $697.00, trust funds. I have followed that same plan throughout in making my assembled statement, known as Plaintiff's Exhibit 211; the explanation attached to the exhibit shows what it is; Plaintiff's Exhibit 211 should be used in connection with Plaintiff's Exhibits 210 and 210a. It shows the aggregate amount of so-called trust funds that were actually used applying the minimum balance rule to the payment of Peckham's personal indebtedness. as well as Plaintiff's Exhibits 210 and 210a shows the same thing about the accumulation of it. The difference between the two schedules is that in 211, wherein we accumulate the trust funds on deposit in Mr. Peckham's account, is that in the latter schedule, it is shown that he had $704.40 more of trust moneys applied, that much more trust money to his personal obli-

gation than he did in the schedules wherein we did not accumulate. The schedules of the same date. Exhibits 210, 210a and 211 are correct analysis made by me from the books and records of the Wichita Royalty Company, the City National Bank, George Peckham and such other books and records as I have examined.

Mr. Humphrey:

We offer in evidence Plaintiff's Exhibit 211, in connection with Plaintiff's Exhibits 210 and 210a, PLAINTIFF'S EXHIBIT 211 as follows:

Assembled Statement in Tabular Form of Analysis of Source of the monies used by G. W. Peckham to pay his personal debt to the City National Bank. Page 1 Statement from January 1, 1923, to November 17,
1665 1925. Page 1443 Statement from November 17, 1925, to October 25. 1929.

There is presented in the two attached schedules, analytical statement, in tabular form, of the monies used by G. W. Peckham to pay his personal indebtedness to the City National Bank.

These two schedules are necessary part of a somewhat similar analysis made in Plaintiff's Exhibits No. 210 and 210a, and are here presented for consideration in connection with same. In the two Exhibits referred to, each payment made by Peckham to the Bank upon his personal indebtedness was, therein, treated as an isolated transaction in order to facilitate the presentation, in readable form, of all the elements and circumstances attending each of such payments to the bank. And in so doing, it was not feasible, in many instances to give effect to the accumulated and highly fluctuating balance of trust funds which were on deposit in Peckham's personal bank account.

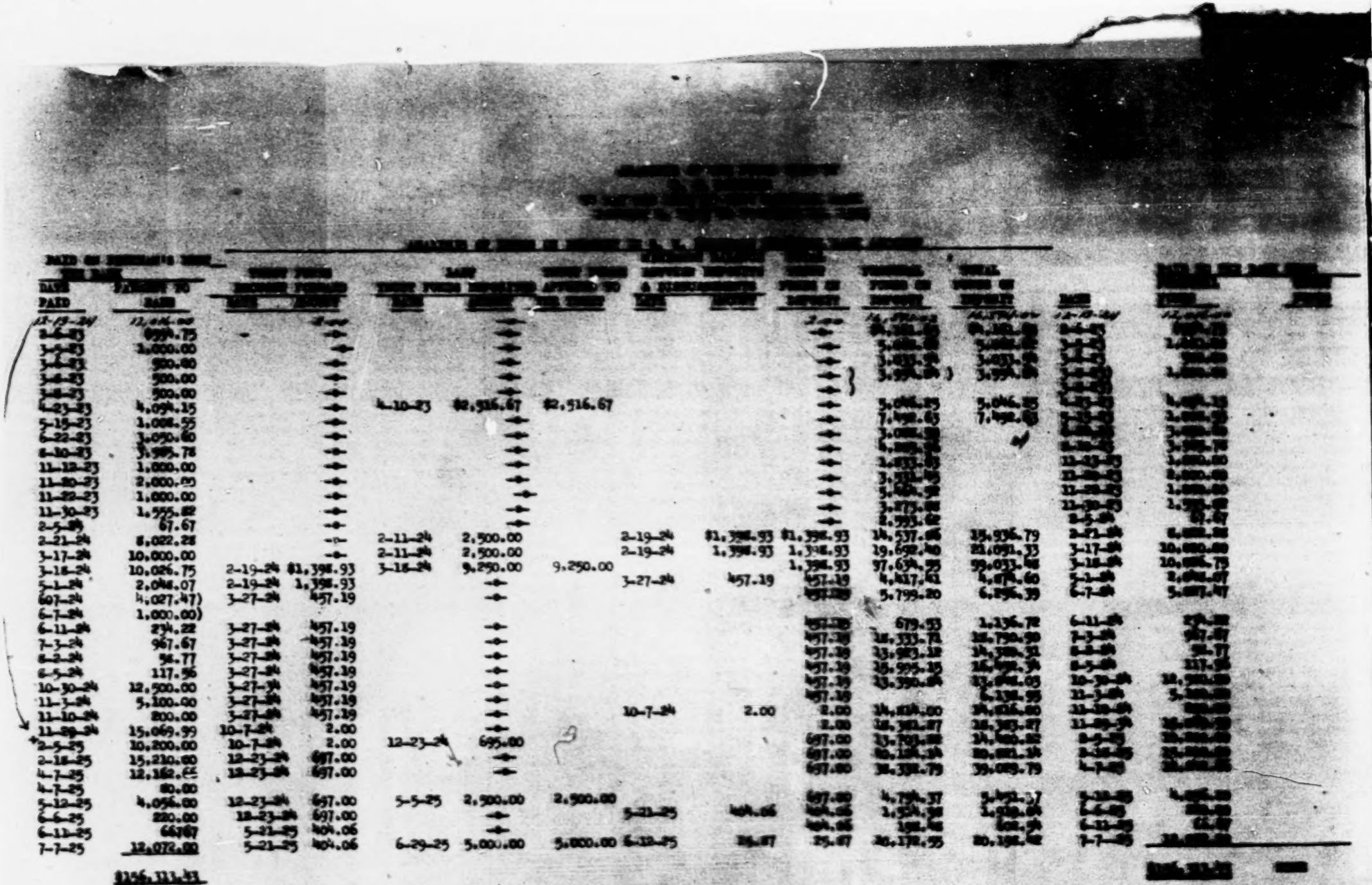
On the other hand, the two schedules herewith submitted, show all payments, by dates and amounts, made by Peckham to the Bank; what part, if any, of such payments were made from trust monies; and, in addition, gives effect to a running statement of the trust monies on deposit in Peckham's commingled bank account. Also, in these schedules, there is eliminated those alleged transfers of funds to Peckham's account which were not, in fact, transfers at all.

While the attached schedules are devoid of the explantory data set forth in Plaintiff's Exhibits No. 210 and 210A, yet they present a more thoroughgoing portrayal of what transpired (with reference to whether or not Peckham used trust money to pay his personal indebtedness to the bank), because they represent a com-
1666 posite picture of the entire series of transactions which may be viewed in the whole and without the confusion which must attend the effort to assimilate a clear and comprehensive picture from a large number of disjointed transactions and facts.

The terms "Trust Funds" and "Minimum Balance," used herein, are subject to the same explanations as are set forth in Plaintiff's Exhibits No. 210 and 210a.

Respectfully submitted,

(Signed) P. H. LAMBERT,
Certified Public Accoutnant.



Page 1

P. H. LAMBERT & COMPANY
CERTIFIED PUBLIC ACCOUNTANTS
WICHITA FALLS, TEXAS

Analysis of the Funds Used by G. W. Peckham to Pay His Debt to City National Bank, November 17, 1925, to October 25, 1929.

Paid on Peckham's Debt to the Bank		Trust Funds Brought Forward		Last Trust Funds Deposit		Trust Funds Applied	Miminum Balance Between Deposit and Disbursements		Total Trust Funds	Personal Funds on	Total Funds		Paid to Bank From	
Date Paid	Payment to Bank	Date	Amount	Date	Amount	to the Trust	Date	Amount	on Deposit	Deposit	on Deposit	Date	Personal Funds	Trust Funds
11-17-25	$1,007.23	6-12-25	$25.87	10- 8-25	$ 5,500.00	$ 5,500.00			$ 25.87	$ 3,190.89	$ 3,216.76	11-17-25	$ 1,007.23	
2-13-26	550.00	6-12-25	25.87	1-18-26	15,769.07	15,769.07	(2- 6-26	$3,488.76)	25.87	22,724.40	22,750.27	2-13-26	550.00	
5-15-26	550.00	6-12-25	25.87	3-31-26	7,500.00	7,500.00	(5- 5-26	187.48)	25.87	890.70	916.57	5-15-26	550.00	
8-10-26	550.00	6-12-25	25.87	8- 2-26	4,000.00	4,000.00	6- 5-26	10.18	10.18	3,618.75	3,628.93	8-10-26	550.00	
9-30-26	503.10	6- 5-26	10.18	8-27-26	4,357.58	4,357.58	(9- 2-26	128.51)	10.18	5,929.29	5,939.47	9-30-26	503.10	
11-12-26	3,050.00	6- 5-26	10.18	10-14-26	10,000.00	10,000.00	(10-19-26	1,871.40)	10.18	19,601.67	18,611.85	11-12-26	3,050.00	
1-19-27	2,506.12	1- 4-27	402.40	1-19-27	2,000.00				2,402.40	1,219.01	3,621.41	1-19-27	1,210.01	$1,287.11
3-16-27	1,500.00	1-19-27	2,402.40	(Three)	3,301.82	500.00	3- 8-27	56.72	358.05	1,800.20	2,158.24	3-16-27	1,500.00	
4-23-27	10,963.75	3-16-27	358.04	3-23-27	2,000.00		4- 2-27	10.93	10.93	13,107.74	13,118.67	4-23-27	10,963.75	
8-23-27	350.00	6-28-27	2.33	8-16-27	1,500.00	(1,500.00)	8-20-27	798.90	798.90	1,000.00	1,798.90	8-23-27	350.00	
10-19-27	520.00	10-14-27	39.91	10-15-27	2,400.00	(2,400.00)			2,414.91	—o—	2,414.91	10-19-27	—o—	520.00 X*
2-15-28	513.33	10-15-27	2,414.91		—o—		11- 1-27	7.31	7.31	6,028.02	6,035.33	2-15-28	513.33	
7-20-28	493.78	2-15-28	7.31	4-20-28	1,850.00	(1,850.00)	6- 9-28	8.10	8.10	3,832.47	3,840.57	7-20-28	493.78	
9-27-28	3,163.78	6- 9-28	8.10	9-27-28	424.66	424.66			8.10	7,899.00	8,709.00	9-27-28	3,163.78	
12- 4-28	614.50	6- 9-28	8.10		—o—				8.10	5,256.33	5,264.43	12- 4-28	614.50	
1-12-29	2,013.33	6- 9-28	8.10		—o—				8.10	2,208.69	2,216.79	1-12-29	2,013.33	
5-11-29	373.76	6- 9-28	8.10		—o—		2-27-29	3.22	3.22	759.73	762.95	5-11-29	373.76	
6-24-29	20,214.44	2-27-29	3.22		—o—				3.22	37,684.82	37,688.04	6-24-29	20,214.44	
8-24-29	381.09	2-27-29	3.22		—o—				3.22	1,041.58	1,044.80	8-24-29	381.09	
9- 7-29	5,000.00	2-27-29	3.22		—o—		8-30-29	2.54	2.54	8,766.72	8,769.26	9- 7-29	5,000.00	
10-25-29	3,061.00	8-30-29	2.54		—o—				2.54	3,318.55	3,321.09	10-25-29	3,061.00	
													$56,072.10	$1,807.11
Total.....	$57,879.21													

X*Note—This item was returned to the trust as set forth on page 1436 of Plaintiff's Exhibit 210A.

1669 The Witness:

In Plaintiff's Exhibit 210, pages 1418 and 1419, I have traced an item of $11,000.00, and explained it; there was another check of like import of $10,000.00, payable to the Security National Bank, which was not deposited in the City National Bank, but which was treated by the cross complaint of Wichita Royalty Company as having been deposited in the City National Bank—I make no reference to a check of $10,000.00, for the reason I used the larger of the two checks on pages 1418, 1419 and page 1420. In other words, if I had used and shown the $10,000.00 check, I necessarily would have had to use the value of the trust fund deposits, which would not have shown the minimum balance.

I have also worked out a schedule and analysis following the cross complainant's bill of complaint, in an effort to account for and to show an accounting and disposition of the various transactions in the bill of complaint, of Wichita Royalty Company, beginning in 1923, and going through all of the various transactions, showing how Mr. Peckham accounted, in so far as I was able to do so, for the moneys which were transferred to him during that period of time. I will hand these two instruments to the examiner, and they are marked "Plaintiff's Exhibits 212 and 212a," and are numbered in reverse order as to point of time. These two exhibits is the report I have made of the application on G. W. Peckham, on the alleged trust funds which he is alleged to have received from the Wichita Royalty Company for the period

1670 beginning October 8, 1925, and ending with his death. Exhibit 212 represents the period beginning October 8, 1925, and ending with his death in November, 1929. 212-a represents the period beginning January 1, 1923, and ending October 8, 1925. Mr. Carson and I have been working together on this report. I heard Mr. Carson's testimony in respect to these various schedules, and items. As a predicate for the items set forth in Plaintiff's Exhibit 212, I used the cross complainant's amended bill of complaint. Beginning on page ....

of the cross complainant's re-casted pleading, in paragraph 17. There is a description and list of vouchers and checks for which recovery is here sought, continuing on page .... down to paragraph 18, comprising some forty or fifty separate items, the first one being check No. 427, for $5,500.00, that item is the first alleged defalcation of Peckham in this amended or recasted pleading. Following that is several continuous items in that paragraph of alleged misappropriations, about sixty of them. I went through those and furnished them in this report, as well as other alleged items of defalcation represented by the transfer or deposit of funds by G. W. Peckham from the royalty company account in the City National Bank, as well as all independent deposit of funds by G. W. Peckham to the City National Bank, which were not, in fact, transferred—Plaintiff's Exhibits 212 and 212a, reflect all of those facts. This is a correct report in so far as the books and records of the royalty company, canceled checks and vouchers, of G. W. Peckham and other books and records of the City National Bank that we were able to find.

1671

Respecting the $5,500.00 items, the first one, our investigation shows that G. W. Peckham acquired property No. 81, for the Wichita Royalty Company October 19, 1925, for which Peckham paid draft through the First National Bank in Wichita Falls in the sum of $2,250.00, plus exchange of $2.25; then as additional expenses which he paid in connection with the acquisition of property No. 81, were revenue stamps bought by him on October 23, 1925, amounting to $2.50, the commission paid by him to C. A. Rogers on October 26, 1925, of $225.00; a total expense to E. C. DeMontel on November 3, 1925, in the amount of $25.00. Then in addition to this property No. 81, he acquired property No. 82. Property No. 81 was the Cross Plains property in Callahan property acquired from Mathis and wife.

He acquired Property No. 82 for the Wichita Royalty Company, for which property Peckham paid B. L. Fain on November 13, 1925, the sum of $1,500.00. This prop-

erty is known as the Kunkle property. The balance of the $5,500.00, or $1,500.00 Mr. Peckham came to the Wichita Royalty Company on November 5, 1925, and the Wichita Royalty Company deposited his check for $1,500.00 in the bank account of the City National Bank in Wichita Falls. All of the various checks, deposit slips and receipts evidencing this transaction have been offered in evidence. Mr. Peckham actually expended for the benefit of the Wichita Royalty Company or for the title and royalties of the Wichita Royalty Company, a little over four thousand dollars out of that check. He paid back to the Wichita Royalty Company the sum of $1,500.00, and he spent $4.75 more than the check amounted to, which was later paid Mr. Peckham by the Wichita Royalty Company, which check has been offered in evidence. My examination shows that the Kunkle Royalty, as well as the Cross Plains Royalty has remained in the name of the Wichita Royalty Company since that purchase, and that the Wichita Royalty Company has received the royalty from the property, and the royalties have exceeded twice the amount of the cost price.

1672

The second item of defalcation is check No. 451, it relates to the Wichita Royalty Company's property No. 83, known as the Porter Ranch. Mr. Peckham received this $1,250.00 from the Wichita Royalty Company to be deposited in his account, and in the acquisition of this property he paid to Knight and Hines the following sums: On December 21, 1925, he paid $1,200.00; on January 2, 1926, he paid $50.00, being the balance in cash down payment on this property, that is for the acquired interest known as the Porter Ranch, which the royalty company paid to Peckham, $1,250.00, and put the money in his individual account and expended the exact amount for the property. The books and records of the Wichita Royalty Company reflects that it owns this property, from the time the original check was issued, all the way through.

I am familiar with the method of making income tax reports on the part of trust associations; it is necessary that they file their return on a prepared form
1673 under the revenue act in effect at that time. It requires that they show their opening balance sheet, and closing balance sheet for the period, together with their operating statement for the taxable period; a schedule of depletion claimed on producing properties and a schedule of depreciation claimed on assets subject to depreciation and a schedule showing the changes, if any during the taxable period, in their surplus account and the net of such changes; and it is further necessary, of course, that the return be sworn to by some officer of the association filing such return. In this investigation I have not been furnished copies of the Wichita Royalty Company's income tax report, and was not able to secure the same.

As to whether or not the joint owners of the Porter Ranch paid for the purchase and expense of the Porter Ranch, like amount as the Wichita Royalty Company, I determined that only in so far as it affected J. T. Harrell and the Wichita Royalty Company. In that instance, Mr. Harrell paid his rateable share of the cost and the Wichita Royalty Company, through G. W. Peckham, paid their rateable share of the cost of the property, as well as did the other owners who had an interest in the property; however, I did not investigate whether or not or in what manner the other owners paid their part of the cost of the property. As far as I could determine, the royalty company received its pro rata part of the rentals that accumulated or came in on the Porter Ranch during the time of Peckham's administration and prior to the time of his death. The next item
1674 charged against Mr. Peckham as misappropriation, check No. 542, for $5,000.00, that represents the first payment made by the Wichita Royalty Company to G. W. Peckham for what is known as the Stephens Royalty for their property No. 84. That item is the initial payment of the purchase of that royalty, there are various

other payments shown in this same list, which are charged as misappropriations against George Peckham for the same property. The items are—check No. 458, for $5,000.00, issued January 11, 1926, and check No. 461 for $15,769.07, issued January 18, 1926. The total of the checks being $25,769.07, and were deposited in Peckham's individual bank account. The voucher of the Wichita Royalty Company reflected those checks were for the purchase of the Stephens Royalty. Peckham paid for those purchases $22,201.32 plus $175.00 interest, plus his interest in what is known as the Curlee land, which was a half interest in a forty acre tract of land adjacent to the City of Wichita Falls, the total expended by Peckham from his account was $22,376.32, plus $2,567.75, which he paid for his interest in the Curlee land. He made this purchase from Mr. Harrell and Mr. Basham, and that matter has been thoroughly gone into and testified about heretofore. The statement of Mr. Harrell on the former trial, in 1932, that he received $20,000.00 cash consideration was incorrect; he actually received, he and Basham together, $22,201.32 as the principal payment on this property, plus $175.00 interest on the deferred payment, making the total amount which they received of
$22,376.32, which amount was divided equally be-
1675 tween them and deposited in the respective bank accounts. I verified that statement from their individual ledger accounts in the bank, from the original deposit slip, evidencing deposits to those ledger accounts, and from G. W. Peckham's canceled checks, and from the instrument of conveyance itself. It seems that Mr. Harrell testified that he received $20,000.00 for this property, he forgot the cash down payment which Mr. Peckham made on the property and only testified as to the amount of the notes which he took.

Mr. Rogers:

I understand we have an agreement throughout Mr. Lambert's testimony that all of these conclusions that he testified to are objected to by us and it is a continuing

objection and applies to his reports and testimony in so far as any part of it may or may not be a conclusion, the objection is continued throughout his testimony.

(Whereupon the Court ruled that the objections were good as to the testimony, but being an equity case the entire record would probably go upon appeal.

The Witness:

Mr. Harrell actually received a cash payment of $2,201.32, and that, added to the note, aggregates $22,201.32. The record shows that since the time the first check was issued for this property, $5,000.00, that the books and records of the Wichita Royalty Company show the ownership of the royalty company of this Stephens *Royalty. The books and records of the Royalty Company*
show that the royalty company received, applied,
1676 or appropriated to its use, the oil runs from this property from January 1, 1926, until the time the properties were sold by the Royalty Company. The records also show the approximate amount of oil produced from this property, the value of it, which is a substantial amount, and is in evidence. The books and records of the Royalty Company show that when the property was sold the Royalty Company retained for its own use and benefit the proceeds of the sale.

I have also treated check No. 478, $17,623.00, and check No. 479, $6,000.00; those two checks total $23,623.70, issued to George W. Peckham and check $17,623.70, was made payable to the City National Bank and was deposited in Peckham's account in the City National Bank; the check for $6,000.00 was made payable to the Security National Bank and was deposited in Peckham's account in that bank. I know that to be true from the records of the City National Bank in the case, and from Peckham's bank statement covering the month of March, 1926, of the Security National Bank, which shows that deposit. It represents a purchase by the royalty company of what is known as a half interest in the Marlborough Addition.

I find among the records a deed from Peckham to the Royalty Company for a one-half interest in that addition, and a letter which has been offered in evidence, transmitting that deed. The books and records of the Wichita Royalty Company show that that was an asset of the Royalty Company since the date of the original check, and considered such by the royalty company up until
1677 the filing of this suit. That matter has been gone into at greath length, the Marlborough purchase. It was the purchase of a suburban venture owned by Mr. Kemp originally, Mr. Harrell and G. W. and W. H. Peckham.

The next item, $7,500.00, was a check No. 485, dated March 31, 1926, and represents an advance by the Wichita Royalty Company to pay their part of the development cost of the Marlborough Addition property; Mr. Peckham deposited this check in his personal account at the City National Bank and paid out of his personal account at the Security National Bank, on the same day, to the Marlborough Addition, the same amount of money.

The next item, check No. 495, for $300.00, issued on April 23, 1926. This check was in payment of interest of Wichita Royalty Company's note No. 72,690, amounting to $15,000.00 held by the City National Bank of Wichita Falls; this sum was applied directly in payment of that interest and did not enter into G. W. Peckham's individual bank account, nor was it in any way applied against his personal liability to the bank.

The next item, No. 503, issued on May 20, 1926, $3,000.00, together with checks Nos. 507, for $1,500.00, issued May 29, 1926, and check No. 510 for $4,500.00 issued on June 16, 1926. Check No. 519, issued July 13, 1926, in the amount of $1,000.00 were all issued for the same purpose, and totaled $10,000.00. These funds were received from the Wichita Royalty Company by G. W. Peckham's to pay the Royalty Company's portion of the improvements in the Marlborough Addition
1678 property and were applied by Peckham's to said royalty company's payment of their assessment

by the following payments made by Peckham from his individual account to the Marlborough Addition; on May 20, 1926, G. W. Peckham paid from his personal account to the Marlborough Addition, the sum of $2,000.00; on June 7, 1926, he paid to the Marlborough Addition from his individual account, $1,000.00; on June 2, 1926, he paid Marlborough Addition from his individual account, $1,500.00; on June 19, 1926, he paid the Marlborough Addition from his individual account $4,500.00; on June 23, 1926, he paid the Marlborough Addition from his individual account, the sum of $1,000.00; making a total he paid from his individual account of $10,000.00 being the same amount advanced to him by those four checks by the Wichita Royalty Company. Mr. Peckham's personal check, shown by the books and records of the Marlborough Addition were for the same purpose that the voucher notation shows, to provide funds with which to develop the property.

The next item, of alleged embezzlement and misappropriation by George W. Peckham is No. 506, for $500.00; this check was issued on May 29, 1926, and was payable to the City National Bank. The Royalty Company's voucher notation states that it is interest on their notes at the bank, and it was issued to pay interest on Wichita Royalty Company's note No. 74,590, amounting to $25,000.00 and held by the City National Bank. This check was applied direct by the bank to pay that interest and did not enter into Mr. Peckham's account and was not applied in any manner to his personal indebtedness to the bank.

1679

Mr. Rogers:

We do not object to the proof of the payment by the Royalty Company direct upon that which was shown to be the liability record of the trust with the bank, but we object to the inference of counsel and the witness that these items are charged as embezzlements, in the light in which the implications are made, in that the suit by the royalty company is one for an accounting. A suit in defense of the notes declared upon by the bank, which

admittedly arises out of and/or renewals of the $15,000.00 and $25,000.00 loans, negotiated between J. T. Harrell and G. W. Peckham in January and March, 1926, respectively, and the Supreme Court of Texas has held that it is an issuable question of fact whether the proceeds of these loans were used for other than trust purposes, and whether or not the loans in fact were made for the personal benefit of G. W. Peckham, and if it be determined that these two loans, or any part thereof, was made for the personal benefit of G. W. Peckham and the proceeds thereof used for unauthorized trust purposes, then the payments made by Wichita Royalty Company upon the liability record standing in its name upon the records of the bank, would be a payment not of its own debt, but the debt of G. W. Peckham. This objection is made that the record may be here understood in the light in which the pleadings seek to hold the bank in this lawsuit, and seek to defend against the obligation declared
1680 upon by the City National Bank.

The Witness:

Next check, No. 521, dated 7-16-26, for $300.00, was issued on that day, made payable to the City National Bank and the Wichita Royalty Company's voucher notation supporting the issue of this check, states that it is to apply on interest on their notes at the City National Bank. This check was applied directly by the bank upon note No. 76878, amounting to $15,000.00 and being the Wichita Royalty Company's note held by the City National Bank; and this $300.00 did not enter into George Peckham's individual account and was not applied in any manner to his personal indebtedness to the bank.

The next check is 525, for $4,000.00, dated August 2, 1926. That, together with three other checks, constitutes a single transaction. The three other checks being No. 532, issued August 27, 1926, in the amount of $4,357.58, and check No. 556, issued December 22, 1926, in the amount of $700.00; and check No. 556a, issued December 22, 1926, and being in the amount of $538.16. The sum of

these four checks being $9,595.74. The voucher notations show that these checks were issued to pay a note which was maturing in September, 1926, against the Marlborough properties. The note was payable to the Highland Irrigation Company who originally sold this property, the originators of the addition. The records show that on October 15, 1926, Mr. Peckham paid with his personal check from his individual bank account to the Highland Irrigation Company, the sum of $9,595.74, being
$7,738.50 of principal of the maturing note, plus
1681 $1,857.24, of interest due on the series of notes,
which were owing by the Wichita Royalty Company on this property. In other words, Mr. Peckham paid from his personal account this sum represented by the four Wichita Royalty Company checks for that very purpose that the voucher notation showed this check was issued for, that is shown by Mr. Peckham's bank statement and the books of the Marlborough Addition and the deposit slips, etc., that have been gone over heretofore and offered in evidence, beginning with the deposit slip of the Highland Irrigation Company showing they received this money from Peckham. It says that Mr. Kemp and Mr. Harrell paid a rateable like amount.

The next item is check No. 431, issued August 27, 1926, in the amount of $500.00. The voucher notation being, a part of the Wichita Royalty Company's record, and supporting the issuance of this check, states that it is to pay interest upon their note at the City National Bank. This check was applied directly by the City National Bank to pay the interest upon the Wichita Royalty Company's note No. 78450, and amounting to $25,000.00 and did not enter into G. W. Peckham's individual account, nor was it applied in any manner against his personal liability to the bank.

The next check is No. 540, issued on October 13, 1926, and amounting to $300.00. The voucher supporting the issuance of this check by the Wichita Royalty Company states that it is to apply on interest on their notes at the

City National Bank. This check was not applied
1682 directly by the City National Bank against the Wichita Royalty Company's note No. 80,371, amounting to $15,000.00, and did not enter into G. W. Peckham's individual account, nor was it applied in any manner against his personal indebtedness to the bank.

The next check, or series of checks, being four in number, are as follows: No. 598, issued April 11, 1927, made payable to B. L. Fain, amounting to $500.00. Check No. 602, issued April 23, 1927, payable to B. L. Fain and amounting to $1,000.00. Check No. 607, dated May 6, 1927, made payable to B. L. Fain in the amount of $500.00. Check No. 610, issued May 16, 1927, payable to B. L. Fain in the amount of $1,000.00. These four checks total $3,000.00. And the voucher notation supporting the issuance of these checks by the Wichita Royalty Company state that they are to purchase oil runs from the Millner tract in Wilbarger County. And on April 15, 1927, B. L. Fain transferred $4,200.00 of oil runs to the Wichita Royalty Company by assignment, and these oil runs were designated on the books of the Wichita Royalty Company as property No. 97. And all of the above checks, except the one numbered 598, in the amount of $500.00, and being the first of the series issued, were indorsed by B. L. Fain to G. W. Peckham and deposited to Mr. Peckham's personal account. However, the check No. 602, which Fain indorsed and G. W. Peckham indorsed, and deposited in his personal account, is offset by a check issued by Peck-
ham on his personal account on the same date
1683 and given to B. L. Fain for the same amount for $1,000.00; in other words, the net result is that B. L. Fain got $1,500.00 of this $3,000.00, and G. W. Peckham received $1,500.00 of the $3,000.00.

This was a purchase of the Millner oil payment of $4,200.00 the purchase price was $3,000.00. Of the purchase price Fain received $1,500.00 and Peckham $1,500.00. That is the story of this transaction. The payee was B. L. Fain, as in the other checks.

The next check, No. 557, dated December 7, 1926. amounting to $1,920.00, to acquire property No. 94. This

check did not pass through Mr. Peckham's account in any manner, and was applied directly to pay a draft drawn with a deed covering this royalty attached. The Wichita Royalty Company acquired the property designated in the voucher supporting the issuance of this check and their books reflect that they owned that property, which is property No. 94, known as the Hartley County Royalty. This $1,920.00 went to pay a fellow by the name of Perkins for the transfer of a certain royalty in a section of land in Hartley County, the title to which has been in the Wichita Royalty Company's name during this period of time, since the issuance of the check. I have gone into that rather fully up to this time.

The next is check No. 559, issued January 11, 1927, and amounting to $300.00. The voucher notation supporting the issuance of this check by the Wichita Royalty Company states that it is to apply on interest of the
1684 notes at the City National Bank. This check was applied by the City National Bank directly against the Wichita Royalty Company's note No. 84,218, amounting to $15,000.00 and did not enter into G. W. Peckham's individual account, nor was it applied in any manner against his individual indebtedness to the bank.

The next two items, checks No. 571 issued January 19, 1927, in the sum of $2,000.00 and check No. 579, issued February, 1927, in the sum of $2,500.00. Check No. 571 is supported by a voucher which originally stated that it was to purchase royalties, but was later changed to read that it was to apply on notes to the City National Bank. Check No. 579, in the amount of $2,500.00, was supported by voucher which stated that it was issued to pay the company's note at the bank. I could not find where either of these checks were applied to the purposes stated in the voucher supporting their issuance. In other words, that is an item I have been unable to trace as to what Peckham did with the money. They are included in the claim which Scannell filed with the administrator of the estate of G. W. Peckham, showing an aggregate of $19,000.00 due by Peckham to the Royalty Company at the time of

his death. That statement is Plaintiff's Exhibit 48. The date of the claim is December 16, 1930.

The next checks are Nos. 582 and 584, both issued on March 1, 1927, and both for the sum of $500.00, making a total of $1,000.00. The voucher notation on those checks,
to pay interest on notes at the City National
1685 Bank. One of the $500.00 items was to reimburse
G. W. Peckham for that amount, which he paid from his individual account on December 8, 1926, to the City National Bank to apply on the Wichita Royalty Company's indebtedness to that bank, and the interest which had accrued upon note No. 81,992, for $25,000.00. The other check was issued as evidenced by the voucher notation supporting the issuance for the purpose of paying interest on the Royalty Company's note at the City National Bank and was applied directly by the bank against the Wichita Royalty Company's note No. 86,209, for $25,000.00, and did not enter into Peckham's individual account, nor was it applied in any manner against his individual indebtedness to the bank. The money was used for the purpose indicated in the voucher of the Wichita Royalty Company.

The next item being checks 550, 554, and 583. 550 was issued on November 20, 1926, in the sum of $7,500.00. 554 was issued on December 2, 1926, in the amount of $1,500.00. Check No. 583 was issued on March 1, 1927, in the amount of $301.82, making a total of $9,301.82. The vouchers supporting the issuance of these two checks show that they were for the following purposes, to purchase property No. 95 at a cost of $5,000.00; to purchase No. 96 at a cost of $3,000.00; to purchase property No. 93, at a cost of $160.00. To pay maturing obligations against the Wichita Royalty Company's Porter Ranch property in the amount of $1,141.82, making a total of $9,301.82.
Out of these funds and out of his individual ac-
1686 count at the City National Bank, G. W. Peckham, on December 2, 1926, paid to W. T. Knight the principal and interest due on December 1, 1926, on the notes against the Wichita Royalty Company's prop-

erty No. 93, being the Porter Ranch, the principal included in that payment was $920.83, and the interest amounting to $220.99, or a total application to the Porter Ranch obligation of $1,141.82. On October 8, 1926, G. W. Peckham transferred to the Wichita Royalty Company their property No. 93 for which, on November 9, 1926, he paid to A. A. Beard the sum of $160.00.

That is property No. 93, royalty on one hundred and sixty acres in Ellis County, Oklahoma.

Property No. 96, as shown by the voucher notation held in the office of the Wichita Royalty Company purports to be an interest in what is known as the Paulk lands in Archer County, Texas, and property No. 95 purports to be an interest in the east half of lot 10, north Anderson Ranch, Archer County, Texas. The royalty company's books and records reflect that they own this property. However, I have not identified definitely the payments made by Peckham for the acquisition of this property or these two properties, Nos. 95 and 96. I have identified substantial moneys paid by Peckham to F. O. Harrell, F. O. Harrell it appears was a broker or a royalty lease trader operating out in this territory. I have been unable to show that Mr. Peckham used this money from his personal account for the acquirement of these properties,
1687 in the identical amount for which the checks were issued. I could not find where he paid that identical sum to Harrell for these specific properties, however, during that period and about that time, he was paying Harrell considerable moneys, as evidenced by numerous checks, and there were no notations on the checks, nothing by which you could identify the transaction.

Direct Examination.

By Mr. Morrow:

The significance of the fact that I found a number of checks from Peckham to Harrell is that Harrell owned the identical interests which the royalty company's rec-

ords reflect they bought. The deed records of Archer County so reflected. The account filed against the estate of G. W. Peckham by Mr. Scannell included those items as stated. I do not purport to know just what explanation Mr. Scannell must have had, or what reason he had for not including these items in the account which he filed in December, 1930. I do not know where F. O. Harrell lived at that time. I do not know whether there was a conveyance from F. O. Harrell to the Royalty Company or not, I simply found none of record in the deed records of Archer County.

Direct Examination.

By Mr. Humphrey:

The only thing the record shows is that F. O. Harrell owned a like interest, that the books and records of the Royalty Company showed they acquired.

The next item, check No. 591, issued on March
1688 23, 1927, in the sum of $2,000.00. The voucher notation supporting the issuance of this check by the Wichita Royalty Company, states that it is to apply upon their note at the City National Bank. I am unable to find where G. W. Peckham applied this $2,000.00 in accordance with the voucher notation. This item is included in the claim filed by E. E. Scannell against the estate of G. W. Peckham, known as Plaintiff's Exhibit 48.

Check No. 599, issued April 14, 1927, in the amount of $300.00. The voucher supporting the issuance of this check by the Wichita Royalty Company states that it is to apply upon their indebtedness at the City National Bank, and was applied by the City National Bank directly against their note No. 87,810, in the amount of $15,000.00 and did not enter into G. W. Peckham's individual account, nor was it applied in any manner against his indebtedness to the bank.

The next check, No. 615, dated June 8, 1927, in the amount of $500.00. The voucher supporting the issuance of this check states that it was applied against their note

at the City National Bank. The City National Bank applied this check directly against the Royalty Company's note No. 89,764, in the amount of $25,000.00. This item did not enter into G. W. Peckham's individual account, nor was it applied in any manner against his indebtedness to the bank.

The next item, $1,500.00, check No. 628, issued July 16, 1927; the voucher notation supporting the issu-
1689 ance of this check by the Wichita Royalty Company states that it is to apply upon their note indebtedness at the City National Bank. The City National Bank applied this check directly to Wichita Royalty Company's note No. 91,730, amounting to $15,000.00, and was applied to pay interest in the sum of $300.00 and to pay principal in the sum of $1,200.00. This check did not enter into G. W. Peckham's individual account, nor was it applied in any manner against Peckham's individual indebtedness to the bank.

The next list or group of checks, being checks 620, 635, 650, 657, 710 and 752, issued on the respective dates of June 8, 1927, August 16, 1927, October 14, 1927, November 5, 1927, April 20, 1928, and September 27, 1928; and in the respective amounts of $1,200.00, $1,500.00, $2,400.00, $1,800.00, $1,850.00, and $424.66. Totaling, in the aggregate, $9,174.66. The voucher notations supporting these checks states that they were to apply upon the Wichita Royalty Company's note indebtedness at the City National Bank. These funds, and each of them, were deposited in G. W. Peckham's individual account at the City National Bank. And out of that account G. W. Peckham made the following payments to the City National Bank, which were applied by the bank upon the Wichita Royalty Company's notes. On August 31, 1927, out of his individual account he paid the City National Bank $500.00, which was applied against the interest accumulated against the Wichita Royalty Company's note No. 93,429, in the sum of $25,000.00. On October 19,
1690 1927, he paid from his individual account to the City National Bank the sum of $1,336.00 to apply

against Wichita Royalty Company's note No. 3347 in the sum of $13,800.00. This payment was applied by the bank to pay $256.00 interest and $1,060.00 principal. On November 25, 1927, Peckham paid to the City National Bank from his personal account the sum of $1,500.00, which was applied by the bank against the Wichita Royalty Company's note No. 4558 in the amount of $25,000.00. In the application it paid $500.00 interest and $1,000.00 principal. On February 15, 1928, G. W. Peckham paid from his individual account to the City National Bank the sum of $3,485.33, which was applied by the bank against the Wichita Royalty Company's note No. 7,552, in the sum of $24,000.00. This being used to pay $3,000.00 on principal and $485.36 interest. On September 27, 1928, G. W. Peckham paid from his individual account to the City National Bank the sum of $424.66, which was applied by the City National Bank against the Wichita Royalty Company note No. 15,381, in the sum of $21,000.00. This payment was applied to pay the interest on this note, making a total application of payment by G. W. Peckham out of his individual account to the City National Bank of $7,244.99, which was applied by the City National Bank against the notes of the Wichita Royalty Company which were held on those respective dates by the City National Bank. This application of $7,244.99 is $1,929.67 less than the total of the six checks which the Wichita Royalty Company issued him for the payment, or rather
1691 to be applied in payment against their notes at the City National Bank.

I have been unable to determine what use he put that difference to. These checks of the Wichita Royalty Company, which I have read off, in my item 35, 37, 38, 39, 41 and 45, comprise a part of the claim made by the Wichita Royalty Company against the estate of G. W. Peckham after his death. They comprised $1,929.67 of that claim, which is the difference between the sum of the checks that the Wichita Royalty issued to G. W. Peckham and the amount of the checks which G. W. Peckham issued to the City National Bank to be applied against the Wichita

Royalty Company's indebtedness to the bank, and for which amount Mr. Scannell gave Mr. Peckham credit in the claim he filed against the Peckham estate.

The next item, being a group of checks, Nos. 682, 717, 721, 733, 768, 791, 814, 824, 836, and 856, issued on the respective dates of January 28, 1928, May 17, 1928, June 1, 1928, July 23, 1928, December 4, 1928, February 19, 1929, June 7, 1929, July 15, 1929, August 30, 1929, and November 23, 1929; and for the respective sums of $2,000.00, $22.00, $424.66, $220.00, $2,000.00, $1,500.00, $1,500.00, $212.49, $1,000.00 and $1,500.00. The voucher notations support the issuance of these checks by the Wichita Royalty Company and each of the checks were payable to the City National Bank, and states that they were to apply on the Wichita Royalty Company's indebtedness at the City National Bank, and each of these checks on the date it was paid, was applied by the City National Bank against the Wichita Royalty Company's note held by the bank on that date, and none of the checks entered into G. W. Peckham's individual account, nor were any of them applied in any manner to pay G. W. Peckham's personal indebtedness to the City National Bank. In other words, those moneys were merely transferred to Peckham's account and by Peckham transferred out of his personal account to the payment of the royalty company's notes. None of these checks went to G. W. Peckham's account, they were paid by the royalty company direct to the City National Bank and were applied directly by the City National Bank against the Wichita Royalty Company's liability to the bank. That traces all of the items in paragraph 17, of this petition, down to the date of Mr. Peckham's death.

1692

Paragraph 18 of the petition charges that the trustees misappropriated the proceeds from two royalties sold; the proceeds from either of those royalties never went into the account of the Wichita Royalty Company in this bank. The history of my investigation in respect to those items is as follows: The Vaughan royalty which they allege as a misappropriation of funds, and connected up

with the $6,000.00 cashier's check, G. W. Peckham deposited to his personal account on February 15, 1929. I am unable to identify from the check, this as being the Vaughan royalty, because the check was a cashier's check issued by the Wichita State Bank and Trust Company to W. C. Duncan and W. C. Duncan indorsed that check to G. W. Peckham, and in the indorsement he
1693 makes a reference to the Bristow Royalties and I do not recall any Bristow Royalties which the Wichita Royalty Company owned. There was no indicia of ownership on the part of the royalty company evidenced by that check, and against that check of $6,000.00, Mr. Peckham paid out of the personal account of White and Duncan, the commission of $300.00 on February 16, 1928. The day after he made this deposit of $6,000.00. However, his check was issued at the same time, but was not paid until the following day, which was on the 16th.

There is another item of $6,000.00, that was on the Wilson Royalty which was sold and the proceeds of which went into G. W. Peckham's account on the following date; December 5, 1927, he deposited $2,400.00; on January 9, 1928, he deposited $1,200.00; on January 5, 1928, he deposited $1,200.00 on principal and $24.00 interest; on February 29, 1928, he deposited to his individual account, $1,200.00 principal and $24.00 interest, making a total deposit to his personal account of $6,048.00, against which he paid W. C. Duncan on December 6, 1927, a commission of $300.00, out of his individual account. There is nothing available from which I can find the nature of these payments as to the Wilson Royalty, whether they were in cashier's checks, cash, or personal checks, I could not tell who they were payable to, all I know is the amounts and the dates on which they were deposited. They were not paid to G. W. Peckham by the Wichita Roy-
1694 alty Company and none of these payments went into the deposit account of the Wichita Royalty Company—I am able to ascertain that.

As to the statement that I have covered all of the items in paragraph 17, after George Peckham died, there is a

charge of misappropriation by the trustee, I have checked those, but these funds were applied to the purposes stated in the vouchers, supporting the issuance of the respect checks, Nos. 880, 890, 898, 908, 920, and 930. They were all issued after Peckham's death and after E. E. Scannell became trustee, I will give a history of each one of those checks. No. 880, payable to the Marlborough Addition for $1,500.00, issued January 24, 1930, was a loan and it was so reflected by the Texas Investment Company books; it was a loan to the operating company of their Marlborough Addition property. Check No. 890, dated February 20, 1930, for $1,000.00 was issued to the City National Bank to apply to their indebtedness at said bank, and was applied on their indebtedness, that is, Wichita Royalty Company's indebtedness.

Check No. 898, issued April 10, 1930, for $1,000.00 was payable to the bank and was to be applied upon the Wichita Royalty Company's indebtedness at the bank, and was applied on their indebtedness by the bank. Check No. 908, issued May 13, 1930, in the sum of $500.00, to the Texas Investment Company, went to the Texas Investment Company, the proceeds of that check.

1695 Check No. 920, issued June 14, 1930, in the amount of $1,500.00 and payable to the bank, was to be applied against the Wichita Royalty Company's indebtedness to the bank and was applied by the bank against that indebtedness. Check No. 930, issued July 14, 1930, in the sum of $3,055.42 and payable to the bank, was to be applied against the Wichita Royalty Company's note or indebtedness at the City National Bank, and was applied by the bank against their indebtedness. That is the last item appearing in Paragraph 17.

Those checks above referred to were all issued after Mr. Peckham's death and after Mr. Scannell became trustee.

The next report I have is Plaintiff's Exhibit 212a, which takes up those items which were allegedly not made the basis of any recovery until after the reversal of

the case by the Supreme Court of Texas ,and which were not included in the suit tried, originally filed and tried, in the State Court. These items, beginning January 1, 1923, and continuing until October 8 1925.

The first item, two checks, No. 1,194, and 1,238, issued under dates of January 16, 1923, and February 21, 1923, and in the amounts of $1,040.00, and $1,046.66. The voucher notation supporting the issuance of these checks states that they were to apply on the indebtedness of property No. 36, 37, and 52, in the Wichita Royalty Company in the Curry pool, which property was bought from G. W. Peckham prior to the time he took his office as trustee of the Royalty Company and refer to payments still due on the property for the purchase price.
1696 The Royalty Company's records themselves state that the payments were $1,000.00 each and the odd dollars are designated as interest to those two payments, that is the two payments, two deposit slips that Mr. Deaton testified to. The next item being check No. 1,281, issued April 2, 1923, in the amount of $1,520.00. This represents a maturing payment of the Wichita Royalty Company property No. 67, and evidenced by the Wichita Royalty Company voucher supporting the issuance of this check and was bought from B. L. Fain. This check, together with the two preceding checks, were not complained of by the Wichita Royalty Company, but were included herein, merely to complete an analysis of all of the items paid by the Wichita Royalty Company to G. W. Peckham after he became trustee. And save and except, of course, the payments made to G. W. Peckham for salary and incidental expenses. The next check being for $1,006.67 likewise was not complained of by the Wichita Royalty Company in this suit, and was issued as a payment on properties which had been purchased from W. H. Peckham prior to the time Mr. G. W. Peckham took office as trustee The check was payable to bearer, when I say bearer, this check was payable to the Security National Bank, deposited in the City National Bank under Mr. Peckham's individual account.

The checks I testified to yesterday were also made payable to G. W. Peckham, however, in explaining this $1,006.67, which went into Mr. Peckham's individual account, he issued his personal check on his personal account for a like amount to W. H. Peckham, a few days later, subsequent to the time he deposited this item in his account.

1697

From my investigation, the very beginning of Mr. Peckham's administration in 1923, it shows that the checks issued to him for the purchase of royalties, salaries and expenses, was very frequently payable to the City National Bank. That was the practice he would employ prior to the time he took office. I went back behind that and examined all the checks which they issued, and not only were the checks which were issued to G. W. Peckham made payable to the bank, but checks issued to other parties for the purchase of properties were frequently made payable to the bank. That was the practice when the deposit account was in the Security National Bank.

This practice of drawing checks payable to the depository bank, was the practice prior to Mr. Peckham's becoming trustee, as evidenced by the vouchers and checks in the files of the Wichita Royalty Company.

Q. And continued throughout Mr. Peckham's administration?

A. Yes, sir.

Mr. Rogers:

The same objection, and the objection is made to apply as well to seeking to vary, by custom, the applicable principles involved with respect to the issuance of the checks drawn upon and payable to the order of the Plaintiff bank, upon the voucher form, referring thereby to the books and records of the royalty company, whereby the payee, depository bank, by the use of but the slightest diligence could have determined that which the trustee caused the books and records of the trust to indicate to be the purpose of the issuance

1698

of the checks and the application to be made of the funds, which inquiry, if pursued with reasonable diligence, would have brought to the bank knowledge of the dual dealings of the trustee and his violation of the terms of the trust.

(Which objection was by the Court overruled, to which the defendant then and there excepted.)

The Witness:

The next item, on Plaintiff's Exhibit 212a, checks Nos. 1,291, issued April 9, 1923, in the amount of $2,516.67 and check No. 1,325, issued May 11, 1923, in the sum of $2,533.33. They are known as items 6 and 9, and they were received by G. W. Peckham and were applied by him to discharge Wichita Royalty Company's obligation on royalties which he sold to them on March 12, 1923, being in payment of Note No. 1, due April 12, 1923, plus interest at eight percent and in payment of note No. 2, due May 12, 1923, plus interest at the rate of eight percent. That is the Grimshaw property. Both of these checks were issued to G. W. Peckham. Grimshaw property purchased from G. W. Peckham. I will explain the payment to B. L. Fain, this item being No. 71, was acquired from G. W. Peckham for a consideration of $7,500.00, the down payment of $2,500.00 went to B. L. Fain and the two notes, or the first payments on the property went to G. W. Peckham, that is, these two items, checks Nos. 1,291 and 1,325, respectively. The down payment, the
1699 check evidencing that payment, was made to the City National Bank and was deposited to B. L. Fain's account in that bank and the voucher notation supporting the issuance of this check by the Wichita Royalty Company states that it is in part payment of royalty interest No. 71, being the Grimshaw property. It never went into the account of George Peckham. The Grimshaw royalty was a royalty that the records show the Wichita Royalty Company acquired from George Peckham—a producing royalty—the records show the

company owned it since the date of acquirement, in 1923, collected and received the oil produced from it, which was more than it cost. As far as the records show, the Wichita Royalty Company still owns it, except for the sale that has been testified to, under the deed of trust.

The next item, check No. 147, issued January 19, 1924, in the sum of $5,000.00 payable to the City National Bank and deposited to G. W. Peckham's account. Voucher notation supporting the issuance of this check by the Wichita Royalty Company states, "to apply on royalties purchased," Mr. Peckham deposited this check in his account on January 19, 1924, and on February 2, 1924, having not purchased the properties and transferred the royalty company the property set up in their voucher notation, returned this $5,000.00 to the Wichita Royalty Company by check out of his individual account which was deposited to the credit of the Wichita Royalty Company in the City National Bank on February 2,
1700 1924. That item is included in that date.

The next item, being check No. 160, dated February 9, 1924, and in the amount of $2,500.00, issued and payable to G. W. Peckham and was deposited in Mr. Peckham's individual account in the City National Bank. Voucher notation supporting the issuance of this check states that it is to secure an interest in twenty acres out of Lot 14, Block 27, American Tribune new Colony Lands, Archer County, Texas. On the same date that Mr. Peckham received this check he paid out of his individual account to A. F. Dowden, the sum of $2,500.00, for an interest in the identical lands set out in the Wichita Royalty Company voucher notation, as evidenced by Mr. Peckham's check and the notation written on the check, and the check has been offered in evidence. The check has not been offered in evidence.

Mr. Humphrey:

We offer the check in evidence.

PLAINTIFF'S EXHIBIT 213.

Wichita Falls, Texas, Feby. 9, 1924. No. . . . . City National Bank of Commerce "18" Pay to A. F. Bowden or Bearer, $2,500.00. (Signed) G. W. Peckham.

Part purchase price 1/16 int in 20 a out of Lot 14B-27 Am Tribune NCCO. Lands Archer County, Texas. (Perforated) Paid 2-16-24. Indorsed A. F. Bowden.

The Witness:

There is no evidence of this option having been completed, or the company having acquired the property.

1701 The next items, 19 and 20, Nos. 154, issued on February 2, 1924, in the sum of $12,000.00, and check No. 185, issued March 18, 1924, in the sum of $9,250.00, making a total of $21,250.00. The first check of $12,000.00 was issued to B. L. Fain and the voucher notation supporting the issuance of this check by the Wichita Royalty Company states that it was to purchase certain royalty interests, and enumerates several of them, located in Oklahoma. Mr. B. L. Fain indorsed this check for $12,000.00 and G. W. Peckham indorsed it and deposited it to his personal account. The check for $9,250.00 was payable to G. W. Peckham and was deposited in his personal account. And the latter check is supported by a voucher notation stating that it was to acquire 1/64 interest in what was known as the Wilson Royalty. Mr. Peckham acquired the identical property as set out in this latter check issued to him and transferred the identical interest to the Wichita Royalty Company by conveyance under date of April 22, 1924, and designated property No. 75 on the Wichita Royalty Company's records. The voucher showed as to the consideration, cash, $21,250.00, and the assumption of an oil obligation running with the royalty of $6,250.00, payable out of one-half of the first oil sold, making a total consideration in cash and oil of $27,500.00 for their 1/64th interest in the Wilson Royalty. The original voucher notation on the check for $12,000.00 was in error, it was actually a part, I be-

lieve, of the purchase price of the Wilson Royalty and
that belief is supported by the conveyance to
1702 the Wichita Royalty Company and the voucher
notation evidencing check No. 185, which refers to check No. 154, as being also a portion of the purchase price of the Wilson Royalty. The $9,250.00 checks were payable to G. W. Peckham and deposited in his personal account. The Wilson Royalty was in Archer County, a producing royalty. There was one of these royalties that was sold, items of sale of $6,000.00 in 1928, I made an investigation as to that transaction from the records of Archer County and various records of the Wichita Royalty Company and G. W. Peckham's account, so I could explain the whole transaction with reference to the purchase of this royalty. Peckham individually purchased more than one sixty-fourth royalty interest from Wilson, he purchased a full one-eighth royalty interest. He made various sales to other besides the Wichita Royalty Company, along about that same period of time. I have investigated those sales. I was able to get the details of sale and purchase of this property in four transactions, one of the Wichita Royalty Company, one of the United Royalty Company, one of the King Royalty Company and one R. A. King. In each instance it shows that Mr. Peckham charged the Royalty Company considerably less for the interest he sold them, than he charged the others to whom he sold interests. I have used 1/32nd of 1/8th royalty interest as a unit price, that is, in order to reduce all the sales to a common level whereby you could compare the purchase price by one company with the
purchase price of another. Taking one thirty-
1703 second of one-eighth, it cost the Wichita Royalty Company per unit, $6,875.00 in cash and oil. Taking the same as the unit price, it cost the United Royalty Company, per unit $9,000.00 in cash and oil. Taking the same unit price, 1/32nd of 1/8th it cost the King Royalty Company $8,500.00 in cash and oil. The sale to the King Royalty is to R. A. King, the head of that company, that unit price cost Mr. King $10,000.00 in cash and

oil. He sold all of the other parties at a price considerably more than he sold the Wichita Royalty, that is the identical land, and about the same time. The sale to the Wichita Royalty Company was on March 17, the United Royalty Company April 8, 1924, to the King Royalty and R. A. King, March 1, 1924. I have made an analysis of what this royalty produced at the time of the sale, it produced $25,622.22 of oil, for which the Wichita Royalty Company received the benefit either in application against the oil debt or as a deposit of money in their account—$6,250.00 in oil and the balance in cash, which was deposited in their account—all they got in the bank account was $25,000.00 less six thousand, or a total of $19,372.22. This $25,000.00 did not include the $6,000.00 that was realized from the sale of the property—so that added to the $25,622.00, the sale price, of $6,000.00 would give $31,622.22—I did not find where the royalty company got the cash for the sale. The amount of oil produced from the Wilson Royalty, Plaintiff's Exhibit 212a, is $31,622.22.

The next item, check for $1,200.00, issued February 29, 1924, being No. 169; the voucher supporting the
1704 issuance of that check by the Wichita Royalty Company carries the notation that it was issued for the purpose of buying a 1924 Studebaker Special Six automobile for Mr. Peckham; the books of the Wichita Royalty Company reflect that they owned this identical automobile from February 29, 1924, until September 30, 1926, on which latter date they sold this automobile for a cash consideration of $555.00 which was on that date deposited in their account in the City National Bank. The Wichita Royalty Company did have a car prior to that time. It was payment for a Studebaker automobile which Mr. Peckham had bought four or five months previous and for which, on August 25, 1923, he paid the Van Dyke Motor Company of Colorado Springs, the purchase price of $1,702.95. In February he sold it to the company for $1,200.00, a discount of about $500.00. The company sold the car almost two years later for $555.00.

The next item, two checks, No. 237 being the first one, issued on July 2, 1924, payable to the Security National Bank and in the sum of $11,000.00; the second check No. 246, issued July 24, 1924, and payable to the Security National Bank in the sum of $10,000.00, making a total for the two checks of $21,000.00. The voucher supporting issuance of these two checks by the Wichita Royalty Company states that they were in payment of an interest in Lots 9 and 10, block 41, J. A. White lands located in Archer County, Texas, and designated as Wichita Royalty Company property No. 76, these checks were
1705 not deposited in George Peckham's account at the City National Bank, but were paid at the Security National Bank, and as to who they were paid to, I don't know. The checks themselves do not give any indication of who cashed them, or received the money on them. The items of $11,000.00 and $10,000.00 referred to in paragraph 57 of the cross complainant's bill of complaint, were deposited to G. W. Peckham's personal account. The story of that transaction from my investigation is as follows: The books and records of the Wichita Royalty Company reflect that they acquired this property No. 76, being the White lands, and the property for which two checks, No. 237 and 246, aggregating $21,000.00 were issued and they kept this property as reflected by their books, from the date of these checks in 1924, until in January, 1925, and during that period received the oil runs from this property; in January, 1925, their books reflect that this property was sold and that they received their portion of the sale price from B. L. Fain. The record title to that property remained in the name of B. L. Fain, Ross R. Robertson, Murchison and Fain, and A. W. Ross. When the properties were sold they accounted to the Wichita Royalty Company for a certain percentage of the proceeds of the sale, and I might add that J. I. Staley was one of the joint owners of this property No. 76. The interest of the Wichita Royalty Company was a leasehold and the interest owned was 46/384ths of the leasehold estate. I do know the entire consideration for

the sale. I do know they received the money
1706 represented with their records, to be their portion of the sale price of the property and that they received the sale price from B. L. Fain, paid into the Wichita Royalty Company in two items, and deposited to their credit in their bank account in the City National Bank.

The next item being check No. 3,317, issued December 23, 1924, in the amount of $695.00, payable to G. W. Peckham and deposited to his personal bank account. The voucher notation supporting the issuance of this check by the Wichita Royalty Company states, "to purchase of 1/16th of 1/8th of royalty in one hundred and twenty-five acres known as block 46, of the Mead L. M. Pasture subdivision; the D. G. Thomas Survey, Abstract 458, Archer County, Texas." The identical property described in the voucher notation supporting this check of $695.00 was conveyed to Wichita Royalty Company on December 16, seven days prior to the issuance of the check and was designated on their record as being property No. 78. F. O. Harrell conveyed it to them.

The next is check No. 373, dated May 5, 1925, in the amount of $2,500.00, payable to G. W. Peckham. The voucher notation supporting the issuance of this check states, "To purchase of 1/16 of the royalty interest in Routan land, 117 acres in Archer County, Texas." On that day, the same day that Mr. Peckham received this $2,500.00, he issued his check to Ray and Massie for an identical amount. That is the identical amount of the Royalty Company's check of $2,500.00. And on June 30.

1925, Ray and Massie conveyed 1/16 interest
1707 to the Royalty Company in 117 acres and designated on the Wichita Royalty Company records as being their property No. 79. This property which Ray and Massie conveyed to Wichita Royalty Company was the identical property and the identical interest set out in the voucher notation supporting the issuance of their check for $2,500.00 to G. W. Peckham. The check is already introduced in evidence and marked "Plaintiff's

Exhibit 173." The memorandum on the check, I read that as 1/12 interest in a deal with Allen, Moran and Routan land, but it has been interpreted by others during the course of this suit as a 1/12 interest, the figure is not plain, it is a fractional interest above 1/11. I found no evidence where Peckham individually acquired title to that property or retained any, I have made a check of the records of Archer County, and they do not reveal that George Peckham acquired an interest in this property.

The next is check No. 385, issued June 24, 1925, in the sum of $6,000.00; it was payable to G. W. Peckham and deposited to G. W. Peckham's personal account. Then check No. 387, issued June 29, 1925, in the amount of $5,000.00 and payable to G. W. Peckham and deposited to G. W. Peckham's personal account. I have voucher notation authorizing the issuance of such check with the following notation, "In payment of 1/16 royalty on all of block 21, first tract, east 25 acres, north 50 acres," he means, the "East twenty-five acres of the north fifty acres, west one hundred acres, block; 19 east
1708 sixty acres of the west one hundred and sixty acres of block 119; and the south sixty acres of the west eighty acres block 22, J. L. Anderson south pasture subdivision Archer County, Texas." And 1/8 of royalty on west one-half of the southwest quarter of the northwest quarter of section 2, J. Pointevant Survey, Young County, Texas, being 217 acres in the J. L. Anderson subdivision known as the Norday district, and twenty acres in the Pointevant Survey, Young County, Texas. The royalty company got a deed to the identical properties set forth in the voucher notation, in so far as they cover the hundred and seventeen acres out of the J. L. Anderson Subdivision in Archer County, Texas; which property was designated as their property No. 80, on the Wichita Royalty Company's books. But I cannot find where they did get a deed from G. W. Peckham covering their interest in the Pointevant survey, however, under escrow agreement dated June 22, 1925, at

the First National Bank of Olney, Texas, G. W. Peckham acquired 1/4 royalty in twenty acres in the west half of the west quarter of the northeast quarter of J. Pointevant Survey, Section No. 2, Young County, Texas. Said royalty being acquired from G. W. Vernon, for a consideration of $3,000.00. On June 30, Mr. Peckham transferred one-half of this royalty interest to F. O. Harrell and applied half of the cost against the half interest he transferred to F. O. Harrell, leaves a cost to Mr. Peckham of $1,500.00 for this Vernon Royalty. That is the Pointevant twenty acre royalty. And left in
1709 Mr. Peckham's name the identical interest in the identical property set out in the Wichita Royalty Company's notation before the issuance of these two checks, one for $6,000.00 and one for $5,000.00. In acquiring 217 acres royalty in the J. L. Anderson subdivision, Mr. Peckham, on June 25 ,1925, paid Murchison and Fain Oil Company his personal funds out of the Security National Bank, $9,493.75, and the check being Plaintiff's Exhibit 178, which Mr. Peckham gave against his personal funds to Murchison and Fain Oil Company for the sum of $9,493.75, states down in the left hand corner, "For 1/16 royalty in 217 acres in block 19, 21, 22, south Anderson Ranch," and being the identical number of acres, the identical interest, and the identical blocks of land set out in the Wichita Royalty Company's voucher notation supporting the issuance of their checks for this property. Delivered to the Wichita Royalty Company covering the interest in the property, two deed, the first deed dated July 1, the second deed dated July 20, 1925, both signed by George Peckham, the title coming through Murchison and Fain. I don't know the date of their deed to Peckham. Mr. Peckham's check to Murchison and Fain is dated June 25, 1925, shortly before the first deed was made to the Royalty Company by Peckham—only six days intervening between the deliverance of the deed and the issuance of the check by the Royalty Company. The $1,500.00—the $3,000.00 Peckham check to Vernon, has been exhibited

in evidence; in addition to this check there was produced in this file a deposit slip showing that George
1710 Peckham deposited an additional $1,000.00 in the bank at Olney, I do not have the deposit slips. In other words, he paid $2,997.00 for the Vernon Royalty, sold half to F. O. Harrell, and the voucher notation shows that he sold the other half to Wichita Royalty. The two items, 30 and 31, aggregating $11,000.00 included the $1,500.00 item—that shows a total tracing of those funds, in Peckham's account of $10,993.75, I would not say that $6.25 was a shortage, because these figures do not include any of the expense which Mr. Peckham paid incidental to acquiring the property—there is an unexplained difference of $6.25. That is the last purchase of royalties set up in the complaint, but there are various other items on page .... which include all of the other allegations of misappropriation in the bill of complaint; both items represent a number of checks issued by the Wichita Royalty Company and are as follows: Nos. 1,294, 1,923, 9, 18, 51, 58, 86, 299, 303, 284, 285, 293, 344, 384a, 386, 406, and 408; these checks were issued on the respective dates as follows: April 14, 1923, April 13, 1923, June 7, 1923, July 6, 1923, August 15, 1923, September 1, 1923; October 20, 1923, November 17, 1924; November 29, 1924; October 22, 1924; October 23, 1924; November 7, 1924; February 18, 1925; June 19, 1925; June 24, 1925; August 8, 1925, and on August 24, 1925.

The respective checks were issued for the respective amounts as follows:

$10,000.00; $5,000.00; $10,308.34; $505.00; $15,000.00; $5,000.00; $5,000.00; $1,500.00; $1,528.89; $7,802.-
1711 50; $2,500.00; $2,000.00; $10,168.90; $8,122.67; $300.00; $10,000.00 and $4,867.78.

All of the above checks were payable to the City National Bank and the voucher notations supporting the issuance of these checks by the Wichita Royalty Company stated that they were to be applied on their indebtedness at the City National Bank, on notes held

by the City National Bank of the Royalty Company's and they were applied upon the interest due by the Royalty Company to the bank, in accordance with my exhibit 212a. Each of these checks were applied by the bank against the notes of the Wichita Royalty Company held by the bank and none of these checks entered into George Peckham's individual account, nor were any of these checks applied in any way upon Mr. Peckham's indebtedness—personal indebtedness—to the City National Bank.

That completes my analysis and investigation of all of the items representing alleged defaults set up in complainant's cross complaint, as well as various transfers that are not alleged as defaults in the account of the Wichita Royalty Company to Mr. Peckham; and completes the detail of the various transfers, checks and transactions between the Wichita Royalty Company and Mr. Peckham as its trustee from January 1, 1923 up to the date of Mr. Peckham's death—that is shown by Plaintiff's Exhibits 212 and 212a, which exhibits are an analysis of funds received by G. W. Peckham from the royalty company during that period of time.

1712 It is a correct analysis of the books and records of the Royalty Company, the bank, and the other interested parties.

Mr. Humphrey:

We offer these two exhibits in evidence.

(Marked "Plaintiff's Exhibits 212 and 212a as follows:)

PLAINTIFF'S EXHIBIT 212.

Application by G. W. Peckham of alleged trust funds from Wichita Royalty Co. October 8, 1925 to July 14, 1930.

P. H. LAMBERT & COMPANY,
Certified Public Accountants, Wichita Falls, Texas.

1713 Analysis of Application of Funds Alleged Received from Wichita Royalty Company by G. W. Peckham, October 8, 1925, to July 14, 1930.

Alleged Trust Funds Received.

Check No.	Date	Amount	Payee	Credit Given	Voucher Notation	Item Number	Page Number
427	10- 8-25	$5,500.00	Bank	Peckham	Purchase Royalties	1	1
451	12-28-25	1,250.00	Do.	Do.	Producing Royalties	2	1
452	1- 4-26	5,000.00	Peckham	Do.	Do.	3	2
458	1-11-26	5,000.00	Bank	Do.	Do.	4	2
461	1-18-26	15,769.07	Do.	Do.	Stephens Royalty	5	2
478	3- 6-26	17,623.70	Do.	Do.	Marlborough Purchase	6	3
479	3- 6-26	6,000.00	Sec. N. Bk.	(Do.)	Do.	7	3
485	3-31-26	7,500.00	Bank	Do.	Marlborough Improvements	8	4
495	4-23-26	300.00	Do.	Note	Interest to Bank	9	4
503	5-20-26	3,000.00	Peckham	Peckham	Marlborough Improvement	10	4
506	5-29-26	500.00	Bank	Note	Interest to Bank	11	5
507	5-29-26	1,500.00	Do.	Peckham	Marlborough Improvement	12	4
510	6-16-26	4,500.00	Do.	Do.	Do.	13	4
519	7-13-26	1,000.00	Do.	Do.	Do.	14	4
521	7-16-26	300.00	Do.	Note	Interest to Bank	15	5
525	8- 2-26	4,000.00	Do.	Peckham	Highland Note	16	5
531	8-27-26	500.00	Do.	Note	Interest to Bank	17	6

1477

Check No.	Date	Amount	Payee	Credit Given	Voucher Notation	Item Number	Page Number
532	8-27-26	4,357.58	Do.	Peckham	Highland Note	18	5
540	10-13-26	300.00	Do.	Note	Interest to Bank	19	7
550	11-20-26	7,500.00	Do.	Peckham	Purchase Royalties	21	14
554	12- 2-26	1,500.00	Do.	Do.	Royalties and Fee	22	14
556	12-22-26	700.00	Peckham	Highland	Highland Note	23	5
556A	12-22-26	538.16	Do.	Do.	Do	24	5
557	12- 7-26	1,920.00	Bank	Draft	Purchase Royalties	25	11
569	1-11-27	300.00	Do.	Note	Interest to Bank	26	12
571	1-19-27	2,000.00	Do.	Peckham	Marlborough Improvement	27	12
579	2-19-27	2,500.00	Do.	Do.	Do.	28	12
582	3- 1-27	500.00	Do.	Do.	Interest to Bank	29	13
583	3- 1-27	301.82	Do.	Do.	Purchase Royalties	30	14
584	3- 1-27	500.00	Do.	Note	Interest to Bank	31	13
591	3-23-27	2,000.00	Do.	Peckham	Purchase Royalties	32	15
599	4-14-27	300.00	Do.	Note	Interest to Bank	33	16
598-602	7-10-1927	3,000.00	B. L. Fain	Peckham	To Purchase Oil Runs	33A	8
615	6- 8-27	500.00	Bank	Note	Interest to Bank	34	16
620	6-18-27	1,200.00	Do.	Peckham	Note to Bank	35	17
628	7-16-27	1,500.00	Do.	Note	Interest to Bank	36	17
635	8-16-27	1,500.00	Do.	Peckham	Note to Bank	37	17
650	10-14-27	2,400.00	Do.	Do.	Do.	38	17
657	11-25-27	1,800.00	Do.	Do.	Interest to Bank	39	17

682	1-28-28	2,000.00	Do.	Note	Note to Bank	40	18
710	4-20-28	1,850.00	Do.	Peckham	Do.	41	17
717	5-17-28	220.00	Do.	Note	Interest to Bank	42	18
721	6- 1-28	424.66	Do.	Do.	Do.	43	18
733	7-23-28	220.00	Bank	Note	Interest to Bank	44	18
752	9-27-28	424.66	Do.	Peckham	Do.	45	17
768	12- 4-28	2,000.00	Do.	Note	Note to Bank	46	18
791	2-19-29	1,500.00	Do.	Do.	Do.	47	18
814	6- 7-29	1,500.00	Do.	Do.	Do.	48	18
824	7-15-29	212.49	Do.	Do.	Interest to Bank	49	18
836	8-30-29	1,000.00	Do.	Do.	Note to Bank	50	18
856	11-23-29	1,500.00	Do.	Do.	Do.	51	18
880	1-24-30	1,500.00	Marlboro	Tex. Inv. Co.	Loan	52	18
890	2-24-30	1,000.00	Bank	Note	Note to Bank	53	18
898	4-10-30	1,000.00	Do.	Do.	Do.	54	18
908	5-13-30	500.00	Tex. Inv. Co.	Tex. Inv. Co.	Note	55	18
920	6-14-30	1,500.00	Bank	Note	Note to Bank	56	18
930	7-14-30	3,055.42	Do.	Do.	Do.	57	18
–o–	1927-1928	6,000.00			Sale of Vaughn Royalty	58	19
–o–	1927-1928	6,000.00			Sale of Wilson Royalty	59	19

Item Number 1.

Amount	$5,500.00.
Property No. 81—Acquired by G. W. Peckham for the Wichita Royalty Company on October 19, 1925, for which Peckham paid Grantees' draft through the First National Bank in the sum of	$2,250.00
Plus Exchange	2.25
	$2,252.25
Revenue Stamps (10-23-25) on property No. 81	2.50
Commission Paid C. A. Rogers (10-26-25) on Property No. 81	225.00
Title Expense paid E. C. DeMontel (11-3-25)	
Do.	25.00
Property No. 82—Acquired by G. W. Peckham for the Wichita Royalty Company, for which property Peckham paid B. L. Fain on November 13, 1925, the sum of	1,500.00
(See Royalty Co. ck. No. 439 and 665.)	
Balance—The remainder of the above item was refunded to the Wichita Royalty Company by Peckham on November 10, 1925	1,500.00
Total benefit accruing to Wichita Royalty Company from the above item	$5,504.75
Less: Wichita Royalty Co. Check No. 438 ...	4.75
Balance	$5,500.00

Item Number 2.

Amount	$1,250.00.
Property No. 83—Acquired by G. W. Peckham for Wichita Royalty Company, for which	

property he paid to Knight and Hines the following sums:

On December 21, 1925	$1,200.00
On January 2, 1926	50.00
Total expended for benefit of Wichita Royalty Company account of the above item	$1,250.00

1716 Items Numbers 3, 4 and 5.

Number 3 Amount	$5,000.00
Number 4 Amount	5,000.00
Number 5 Amount	15,769.07
Total	$25,769.07

Property No. 84—Stephens Royalty acquired for the Wichita Royalty Company by G. W. Peckham and for which he paid to J. T. Harrell and C. E. Basham the following consideration:

Date.	Interest.	Principal.	Total Amount.
1-16-26		$2,201.32	$2,201.32
1-25-26	$28.00	10,000.00	10,028.00
3- 6-26	60.00	5,000.00	5,060.00
3-31-26	87.00	5,000.00	5,087.00
	Total Cash	$22,201.32	

Add: Curlee Land Cost (1-11-26)	$2,567.75	
Increase in value	1,000.00	
Sale Price of Curlee Land		$3,567.75
Consideration paid by G. W. Peckham		$25,769.07

1717 Items Numbers 6 and 7.

Amount $23,623.70

Marlborough Property: On March 6, 1926, G. W. Peckham acquired a 1/4 interest in this property from W. H. Peckham for a cash consideration of $11,811.85

To this 1/4th interest he added the 1/4 interest acquired originally by him from the Highland Irrigation Company under dates of September 19, 1925, and January 8, 1926, and transferred his entire 1/2 interest to the Wichita Royalty Company by deed dated (by the acknowledgment) April 10, 1926, for a consideration arrived at as follows:

Cost of 1/4 interest bought 3-12-26 $11,811.85

Value of 1/2 interest based on above cast $23,623.70

Note: Of the $23,623.70 paid to G. W. Peckham by the Wichita Royalty Company for this property $17,623.70 was deposited to his bank account at the City National Bank and the remaining $6,000.00 was deposited to his account in the Security National Bank.

1718 Item Number 8.

Amount $7,500.00

On April 15, 1926, from his account at the Security National Bank, G. W. Peckham paid to Marlborough Addition, the sum of this item amounting to $7,500.00

Item Number 9.

Amount $300.00

On April 23, 1926, this item was applied to pay the interest on Wichita Royalty Company Note No. 72690 amounting to $15,000.00 and held by the City National Bank, said interest, due and paid amounted to $300.00

Note: This item did not pass through Peckham's account in any manner.

Item Numbers 10, 12, 13 and 14.

Number 10 amounting	$3,000.00
Number 12 Amount	1,500.00
Number 13 Amount	4,500.00
Number 14 Amount	1,000.00
Total	$10,000.00

These funds received from the Wichita Royalty Company to pay their portion of Improvements in the Marlborough Addition, were applied by G. W. Peckham to said Wichita Royalty Company liability by the following payments made from his account to said Marlborough Addition:

Paid To.	Date.	Amount.
Marlborough Addition	5-20-26	$2,000.00
Marlborough Addition	6- 7-26	1,000.00
Marlborough Addition	6- 2-26	1,500.00
Marlborough Addition	6-19-26	4,500.00
Marlborough Addition	7-23-26	1,000.00
Total applied to Wichita Royalty Company liability		$10,000.00

1719 Item Number 11.

Amount $500.00

On June 2nd, 1926, this item was applied to pay the interest on Wichita Royalty Company Note No. 74590 amounting to $25,000.00, and held by the City National Bank, said interest due and paid, amounted to $500.00

Note:—This item in no manner passed through Peckham's account.

Item Number 15.

Amount $300.00

On July 17, 1926, this item was applied to pay the interest on Wichita Royalty Company Note No. 76878 amounting to $15,000.00, and held by the City National Bank. Said interest, due and paid, amounted to $300.00

Note: This item in no manner passed through the Peckham's account.

Items Numbers 16, 18, 23 and 24.

Number Amount 16	$4,000.00
Number Amount 18	4,357.58
Number Amount 23	700.00
Number 24 Amount	538.16
Total	$9,595.74

These funds received from the Wichita Royalty Company by G. W. Peckham to meet their maturing liability

on notes held by the Highland Irrigation Company, were applied on said notes as follows:

Payment to the Highland Irrigation Company from the account of G. W. Peckham on October 15, 1926, the sum of $9,595.74

(Peckham's check in evidence in first trial.)

1720 Item Number 17.

Amount $500.00

On August 30, 1926, this item was applied to pay the interest on Wichita Royalty Company Note No. 78450 amounting to $25,000.00, and held by the City National Bank. Said interest, due and paid, amounted to $500.00

Note: This item in no manner passed through Peckham's Accounts.

1721 Item Number 19.

Amount $300.00

On October 19, 1926, this item was applied to pay the interest on Wichita Royalty Company Note No. 80371 amounting to $15,000.00, and held by the City National Bank. Said interest, due and paid, amounted to $300.00

Note: This item in no manner passed through Peckham's accounts.

1722 Item Number 33A.

Amount $3,000.00

This item is made up of four checks issued by the Wichita Royalty Company and being as follows:

Date.	Number.	Payee.	Amount.
4-11-27	598	B. L. Fain	$ 500.00
4-23-27	602	B. L. Fain	1,000.00
5- 6-27	607	B. L. Fain	500.00
5-16-27	610	B. L. Fain	1,000.00
Total			$3,000.00

These checks were in payment for $4,200.00 of oil runs from certain lands situated in Wilbarger County, Texas. On April 15, 1927, B. L. Fain transferred said $4,200.00 of oil runs to Wichita Royalty Company by assignment and designated as Property No. 97 on records of said Company. (See Royalty Co. check #611.)

Of the above checks, all except No. 598 were indorsed by B. L. Fain to G. W. Peckham and deposited to Peckham's personal account.

Check Number 602 was deposited to Peckham's account on 4-23-27 and on the same date he issued his personal check to B. L. Fain for $1,000.00.

It is therefore evident that of the above amount G. W. Peckham received of B. L. Fain the sum of $1,500.00, and it is impossible for me to say whether this $1,500.00 represents Peckham's portion of the sale or a payment of money due Peckham by Fain on some deal or other obligation.

1723 Item Number 25.

Amount $1,920.00

Property No. 94: This property was acquired from Joseph M. Perkins of Eastland County, Texas. This

royalty was originally conveyed to G. W. Peckham by an instrument signed by the grantee, Perkins, on August 7, 1926, and acknowledged on September 29, 1926. G. W. Peckham conveyed the identical interest to the Wichita Royalty Company by an instrument signed by the said Peckham on August 7, 1926, and acknowledged by him on December 15th, 1926.

The consideration for this property was paid by the Wichita Royalty Company's check number 557, issued on December 7, 1926, payable to the City National Bank.

On December 15, 1926, this check was applied to pay a draft drawn for the consideration and coming through the Texas State Bank of Eastland, Texas, with deed attached and in the sum of (see Royalty Company Check Number 563) $1,920.00

(This item did not go into Peckham's bank account.)

1724 Item No. 26.

Amount $300.00

On January 15, 1927, this item was applied to pay the interest on Wichita Royalty Company Note 84218 amounting to $15,000.00, and held by the City National Bank. Said interest, due and paid, amounted to $300.00

Note:—This item in no manner passed through Peckham's accounts.

Items Numbers 27 and 28.

Number 27 Amount $2,000.00
Number 28 Amount 2,500.00

These checks on the Wichita Royalty Company were issued on 1-19-27 and 2-19-27, respectively and on those dates seem to have been deposited to G. W. Peckham's account. I am unable to find where Peckham applied same by payment to the Marlborough Addition, the alleged purpose of the checks. I am unable to determine whether or not Peckham was aware of their purpose or that they were deposited to his account, since I do not have the checks from which I may determine whether or not the indorsement is his.

1725 Items Number 29 and 31.

Number 29 Amount	$500.00
Number 31 Amount	500.00
Total	$1,000.00

On December 8, 1926, G. W. Peckham, from his personal account paid the City National Bank the interest due on Wichita Royalty Company Note Number 81992 for $25,000.00. Said interest due and paid amounted to	$500.00
On March 3, 1927, G. W. Peckham, applied item No. 31 direct and paid the City National Bank the interest due on Wichita Royalty Company Note Number 86209 for $25,000.00. Said interest due and paid amounted to	500.00
Total	$1,000.00

(Item Number 31 did not pass through Peckham's account.)

1726 Items Numbers 21, 22 and 30.

Number 21 Amount	$7,500.00
Number 22 Amount	1,500.00
Number 30 Amount	301.82
Total	$9,301.82

These items are alleged to have been given to G. W. Peckham for the following:

To Purchase Property No. 95	$5,000.00
To Purchase Property No. 96	3,000.00
To Purchase Property No. 93	160.00
To Pay Maturity on Porter Ranch Note	1,141.82
Total	$9,301.82

On December 2, 1926, G. W. Peckham paid to W. T. Knight the principal and interest due on December 1, 1926, on the Note held against the Wichita Royalty Company Property No. 83.

Principal	$920.83	
Interest	220.99	$1,141.82

On October 8, 1926, G. W. Peckham transferred to the Wichita Royalty Company their Property No. 93, for which, on November 9, 1926, he paid A. A. Beard the sum of (see Royalty Co. ck. No. 551) $160.00

Property No. 96 represents an interest in the SW 60 A of the E. Paulk lands, Archer County, Texas. The records do not reveal that this property was ever taken in either the name of Peckham or the Company. But on August 5, 1926, F. O. Harrell, with whom Peckham carried on extensive dealings, acquired a lease on this identical property. And on October 28, 1926, he acquired in his name a 1/4 of the royalty on the same tract.

Property No. 95 represents a 3/16 interest in the leasehold on the E 1/2 of Lot 10, North Anderson Ranch. The same situation prevails with this property as with the one above. Harrell, on February 1, 1927, acquired an interest in this identical property from the Sun Company.

1727 Item Number 32.

Amount $2,000.00

This item appears to have been deposited in G. W. Peckham's personal account on 3-23-27, the date the

check is alleged to have been drawn. As to its actual purpose, I am unable to determine whether it was issued for a property or to retire a Company liability. I do not have the check, and, therefore, am unable to compare the indorsement with Peckham's signature to determine, if possible, whether or not he made this deposit to his account.

1728 Item Number 33 and 34.

Number 33 Amount	$300.00
Number 34 Amount	500.00

On April 23, 1927, item Number 33 was applied to pay the interest on Wichita Royalty Company Note Number 87810 amounting to $15,000.00 and held by the City National Bank. Said interest, due and paid, amounted to $300.00

On June 8, 1927, item Number 34, was applied to pay the interest on Wichita Royalty Company Note Number 89764 amounting to $25,000.00 and held by the City National Bank. Said interest, due and paid, amounted to $500.00

Note:—In no manner did either of these items pass through Peckham's accounts.

1729 Item Number 36.

Amount $1,500.00

On July 16, 1927, this item was applied on Wichita Royalty Company Note Number 91730 amounting to $15,000.00 and held by the City National Bank:

To Pay Interest	$300.00	
To Apply on Principal	1,200.00	
Total		$1,500.00

Note: In no manner did this item pass through Peckham's accounts.

Items Numbers 35, 37, 38, 39, 41 and 45.

Number 35	6-18-27	Amount	$1,200.00
Number 37	8-16-27	Amount	1,500.00
Number 38	10-14-27	Amount	2,400.00
Number 39	11-25-27	Amount	1,800.00
Number 41	4-20-28	Amount	1,850.00
Number 45	9-27-28	Amount	424.66
Total			$9,174.66

Against these items G. W. Peckham paid from his personal account the following sums which were applied on the indebtedness of the Wichita Royalty Company to the City National Bank.

Date of Payment	Number of Note	Amount of Note	Amount Paid by Peckham Principal	Interest	Total
8-31-27	93429	$25,000.00	–o–	$500.00	$ 500.00
10-19-27	3347	13,800.00	$1,060.00	276.00	1,336.00
11-25-27	4558	25,000.00	1,000.00	500.00	1,500.00
2-15-28	7552	24,000.00	3,000.00	485.33	3,485.33
9-27-28	15381	21,000.00	–o–	424.66	424.66
Total Applied					$7,244.99

1730 Items Numbers 40, 2, 3, 4, 6, 7, 8, 9, 50, 1:

Number 40	Amount....	$2,000.00
Number 42	Amount....	220.00
Number 43	Amount....	424.66
Number 44	Amount....	220.00
Number 46	Amount....	2,000.00
Number 47	Amount....	1,500.00
Number 48	Amount....	1,500.00
Number 49	Amount....	212.49
Number 50	Amount....	1,000.00
Number 51	Amount....	1,500.00

These items were applied directly against the Wichita Royalty Company's indebtedness to the City National Bank upon the following dates and in the following manner:

Item Number (Above)	Date of Payment to Bank	On Note Number	Amount of Note	Application of Payment On Principal	On Interest	Total
40	1-28-28	6886	$12,740.00	$1,740.00	$260.00	$2,000.00
42	5-17-28	10636	11,000.00	–o–	220.00	220.00
43	6- 1-28	11167	21,000.00	–o–	424.66	424.66
44	7-23-28	13096	11,000.00	–o–	220.00	220.00
46	12- 4-28	17453	11,000.00	1,531.64	468.36	2,000.00
47	4-23-29	20232	9,468.36	1,287.51	212.49	1,500.00
48	6- 7-29	23631	21,000.00	350.65	1,149.35	1,500.00
49	6-15-29	24777	8,180.85	53.13	159.36	212.49
50	8-30-29	26135	29,194.63	399.39	600.61	1,000.00
51	11-23-29	26135	28,795.24	1,500.00	–o–	1,500.00

Note: None of these funds ever, in any manner, passed through the account of G. W. Peckham.

1731 Items Numbers 58 and 59.

Number 58 Amount	$6,000.00
Number 59 Amount	6,000.00
Total	$12,000.00

Item Number 58 represents the sale of the Vaughan Royalty which belonged to the Wichita Royalty Company. On February 15, 1928, G. W. Peckham deposited to his account the sale price of this property amounting to $6,000.00

Deduct—A 5% commission was paid on this sale by G. W. Peckham to White & Duncan on 2-16-28 300.00

Balance $5,700.00

Item Number 59 represents the sale of the Wilson Royalty which belonged to the Wichita Royalty Company. This property was sold in December, 1927, and the following amounts collected on the sale price were deposited to Peckham's account:

12-5-27	$2,400.00
1-9-28	1,200.00
1-25-28	1,224.00
2-29-28	1,224.00
Total Sale Price and Interest	$6,048.00

Less—5% commission paid on this sale by G. W. Peckham to W.C. Duncan on 12-6-27 ..... 300.00

Balance $5,748.00

1732

PLAINTIFF'S EXHIBIT 212a.

Application by G. W. Peckham of Alleged Trust Funds From Wichita Royalty Co. January 1, 1923, to October 8, 1925.

1733

Analysis of Application of Trust Funds Alleged to Have Been Received From Wichita Royalty Company by G. W. Peckham, January 1, 1923, to October 8, 1925.

Alleged Trust Funds Received.

Check No.	Date	Amount	Payee	Credit Given	Voucher Notation	Item Number	Page Number
1194	1-16-23	$1,040.00	Bank	Peckham	On Property #52 (McGaw)	1	1
1238	2-21-23	1,046.66	Do.	Do.	On Property 36-7-52	2	1
1281	4- 2-23	1,520.00	Do.	Do.	On Property #67	4	1
1282	4- 2-23	1,006.67	Do.	Do.	On Property #70	5	2
1291	4- 9-23	2,516.67	Peckham	Do.	On Property #71 (Grinshaw)	6	2
1294	4-14-23	10,000.00	Bank	Note	Borrowed Money	7	8
1293	4-13-23	5,000.00	Do.	Do.	Do.	8	8
1325	5-11-23	2,533.33	Peckham	Peckham	On Property #71	9	2
9	6-27-23	10,308.34	Bank	Note	To Pay Off Note	10	8
18	7- 6-23	505.00	Do.	Do.	Interest & Taxes	11	8
51	8-15-23	15,000.00	Do.	Do.	On Loan	12	8

1404

58	9- 1-23	5,000.00	Do.	Do.	Do.	13	8
86	10-20-23	5,000.00	Do.	Do.	Do.	14	8
299	11-17-24	1,500.00	Do.	Do.	Do.	15	8
303	11-29-24	1,528.89	Do.	Do.	Do. (Final)	16	8
147	1-19-24	5,000.00	Do.	Peckham	On Royalty Purchase	17	3
160	2- 9-24	2,500.00	Peckham	Do.	Option on Royalty	18	3
154	2- 2-24	12,000.00	B. L. Fain	Do.	On Royalty Purchase	19	3
169	2-29-24	1,200.00	Peckham	Do.	On Automobile	19A	4
185	3-18-24	9,250.00	Peckham	Do.	On Royalty (Wilson)	20	3
237	7- 2-24	11,000.00	Sec. N. Bk.	Do.	On L. 9 & 10 B41, White Lands	21	5
246	7-24-24	10,000.00	Do.	Do.	Do.	22	5
284	10-22-24	7,802.50	Bank	Note	On Loan	23	8
285	10-23-24	2,500.00	Do.	Do.	Do.	24	8
293	11- 7-24	2,000.00	Do.	Do.	Do.	25	8
317	12-23-24	695.00	Peckham	Peckham	On Property #78	26	6
344	2-18-25	10,168.90	Bank	Note	On Loan	27	8
373	5- 5-25	2,500.00	Peckham	Peckham	On Routan Property #79	28	7
384A	6-10-25	8,122.67	Bank	Note	On Loan	29	8
385	6-24-25	6,000.00	Peckham	Peckham	On Purchase of Properties	30	7
387	6-29-25	5,000.00	Do.	Do.	Do.	31	7
386	6-24-25	300.00	Bank	Note	Interest on Loan	32	8
406	8- 8-25	10,000.00	Do.	Do.	On Loan	33	8
408	8-24-25	4,867.78	Do.	Do.	Do.	34	8

Items Nos. 1 and 2.

Number 1 Amount $1,040.00
Number 2 Amount 1,046.66

These items were applied by G. W. Peckham, upon their receipt, against the Wichita Royalty Company's indebtedness incurred in the purchase of their Properties Nos. 36, 37 and 52.

Item Number 4.

Amount $1,520.00

This represents a maturing payment on Wichita Royalty Company Property No. 67 bought from B. L. Fain. Said funds were evidently used by G. W. Peckham to discharge this liability, since at no later date did the company again pay this particular maturity.

1735 Item Number 5.

Amount $1,006.67

This item received by G. W. Peckham on April 2, 1923, and on April 3, 1923, applied by him to pay Wichita Royalty Company obligation of $1,000.00 plus interest due on royalty purchased from W. H. Peckham per escrow agreement No. 1666.
Total applied $1,006.67

Items Number 6 and 9.

Number 6 Amount $2,516.67
Number 9 Amount 2,533.33

These items received by G. W. Peckham were applied by him to discharge Wichita Royalty Company obliga-

tion on royalty sold to them on March 12, 1923, under escrow agreement No. 1663:

Note Number 1 Due 4-12-23, plus 8% interest	$2,516.67
Note Number 2 Due 5-12-23, plus 8% interest	2,533.33

Total cost of Royalty No. 71 sold under above escrow agreement:

Cash Payment 3-10-23	$2,500.00	Paid to B. L. Fain
Due 30 Days at 8%	2,500.00	Paid above
Due 60 Days at 8%	2,500.00	Paid above

1736 Item Number 17.

Amount $5,000.00

This item received by G. W. Peckham on January 19, 1924, was returned to the Wichita Royalty Company on February 2, 1924, and deposited to their account on that date and in the amount of $5,000.00

Item Number 18.

Amount $2,500.00

This item was issued under date of February 9, 1924, to G. W. Peckham. On the same date and from his personal account he paid A. F. Bowden the sum of $2,500.00

Said payment being in part (option) for a 1/16 interest in 20 acres out of Lot 14, B. 27, A. T. N. C. Lands, Archer County, Texas.

Items Numbers 19 and 20.

Number 19 Amount	$12,000.00
Number 20 Amount	9,250.00
Total	$21,250.00

The above items received by G. W. Peckham on February 2, and March 17, 1924, respectively, were in payment for the Wilson Royalty conveyed by him to the Wichita Royalty Company under date of April 22, 1924. Designated Property No. 75 on Wichita Royalty Company records and costing them as follows:

Above Cash Consideration	$21,250.00
Assumption of Oil obligation to L. F. Wilson and running with the original grant	6,250.00
Total Cost to Wichita Royalty Co. of the 1/64th Royalty interest	$27,500.00

Other Sales made out of the Wilson Royalty and which Reflects its Market Value.

Sold To	Date	Escrow No.	Interest	Sale Price	Sale Unit Price
Wichita Royalty	3-17-24	—o—	4/32 of 1/8	$27,500.00	$6,875.00
United Royalty	4- 8-24	2095	3/32 of 1/8	27,000.00	9,000.00
King Royalty	3- 1-24	2097	1/32 of 1/8	8,500.00	8,500.00
Do.	3- 1-24	2096	2/32 of 1/8	20,000.00	10,000.00

These above items are shown only for the purpose of picturing the market price of the above royalty.

1737 Item Number 19A.

Amounting to $1,200.00

On February 29, 1924, G. W. Peckham received the above amount for a 1924 Studebaker Special Six. On September 30, 1926, two years and seven months after purchase, the Wichita Royalty Company sold this automobile for a cash consideration of .. $555.00

1738 Items Numbers 21 and 22.

Number 21 Amount $11,000.00
Number 22 Amount 10,000.00

The above items represent two Wichita Royalty Company checks drawn payable to the Security National Bank and purport to be for the purchase of an interest in Lots 9 and 10, Block 41, J. A. White Lands, and designated as Property No. 76 on Company's records.

This property shows, from the Wichita Royalty Company records, to have been sold in January, 1925, to or through B. L. Fain, from whom they received two payments aggregating $2,334.90.

On April 17, 1924, B. L. Fain acquired from A. W. Ross an undivided one-half interest in an oil and gas lease on the above lands. Said assignment being recorded in Book 88, Page 218 of the deed records of Archer County, Texas and in addition to a stated consideration of $10.00, it provided that the grantee, B. L. Fain, should drill a 1,700 foot well on said property, and as a further consideration for the lease, B. L. Fain agreed to pay A. W. Ross $2,500.00 out of 7/32 of the first oil produced. The oil obligation was paid and A. W. Ross released his lien by an instrument dated September 27, 1924, and recorded in Book 94, Page 92, of the above mentioned deed records.

Under date of December 15, 1924, B. L. Fain, together with the owners of the other one-half interest (C. W. Murchison, E. R. Fain, Ross Rovertson, J. I. Staley, and A. W. Ross), sold this lease together with all machinery and equipment to J. H. White for a stated consideration of $15,000.00, and on that date grantors conveyed their 7/8th working interest to J. H. White by conveyance recorded in Book 93, Page 392 of the deed records of Archer County, Texas.

It is evident that G. W. Peckham, from the checks paid from his personal account, acquired an interest in this lease as set out in Wichita Royalty Company's vouchers.

But I am unable to determine from Peckham's disbursements the exact cost at which Peckham acquired Wichita Royalty's interest in said lease. During the period in which this lease was held in the name of B. L. Fain, Peckham made numerous payments to Fain and to Murchison & Fain for the development and operating costs incurred on this property.

1739 Item Number 26.

Amount $695.00

This item was given to G. W. Peckham on December 23, 1924, to pay for a 1/16 of 1/8 royalty in 125 acres in Archer County, Texas. This royalty was conveyed to the Wichita Royalty Company on December 16, 1923, and designated their property No. 78.

1740 Item Number 28.

Amount $2,500.00

This item received by G. W. Peckham on May 5, 1925, was paid out by him on May 6, 1925, to Ray and Massie who, on June 30, 1925, conveyed a 1/16 royalty interest to the Wichita Royalty Company in the 117 acre tract designated property No. 79 on the records of said company. Peckham paid Ray and Massie $2,500.00

(See Royalty Company Check Number 448.)

Items Numbers 30 and 31.

Number 30 Amount	$6,000.00
Number 31 Amount	5,000.00
Total	$11,000.00

On the dates of July 1st and 20, 1925, G. W. Peckham conveyed to Wichita Royalty Company a 217 acres royalty interest. This property is designated as No. 80 on the records of said company. For these properties, conveyed on the above dates, G. W. Peckham on June 25, 1925, paid Murchison-Fain Oil Company, from his personal funds at the Security National Bank, the sum of $9,493.75

Under escrow agreement dated June 22, 1925, at the First National Bank, Olney, Texas, G. W. Peckham acquired an undivided 1/4 royalty in 20 acres; being the W. 1/2 of the SW 1/4 of N. W. 1/4 of J. Pointevent Survey, Section No. 2, Young County, Texas. Said royalty being acquired from G. W. Vernon for a consideration of $3,000.00

On June 30, 1925, G. W. Peckham transferred one-half of the above interest to F. O. Harrell. Cost of said one-half being ... $1,500.00

The remaining interest, being the undivided 1/8 royalty mentioned in Wichita Royalty Company checks 385 and 387, cost G. W. Peckham the sum of ..... $1,500.00 which does not include any expense incident to acquiring said interest.

Total application made for benefit of Wichita Royalty Company on the above items Nos. 30 and 31 (Plus expenses, if any) $10,993.75

Item Number	Amount
7	$10,000.00
1741 8	5,000.00
10	10,308.34

Item Number	Amount
11	505.00
12	15,000.00
13	5,000.00
14	5,000.00
15	1,500.00
16	1,528.89
23	7,802.50
24	2,500.00
25	2,000.00
27	10,168.90
29	8,122.67
32	300.00
33	10,000.00
34	4,867.78

All of the above items were payable to the City National Bank and, as directed, were applied as follows on Wichita Royalty Company notes payable held by the bank:

Item No.	Date of Payment	Note No.	Applied on Notes Principal	Interest	Total
7	4-14-23		$10,000.00		$10,000.00
8	4-13-23		5,000.00		5,000.00
10	6- 7-23		10,000.00	$308.34	10,308.34
11	7- 6-23	39883		505.00	505.00
12	8-15-23	39883	15,000.00		15,000.00
13	9- 1-23	39883	5,000.00		5,000.00
14	10-20-23	43226	5,000.00		5,000.00
15	11-17-24	55659	1,500.00		1,500.00
16	11-19-24	55669	1,500.00	28.89	1,528.89
23	10-22-24	52917	7,500.00	302.50	7,802.50
24	10-22-24	55659	2,500.00		2,500.00
25	11- 8-24	55659	2,000.00		2,000.00
27	2-18-25	56936	10,000.00	168.90	10,168.90
29	6-19-25	61784	8,000.00	122.67	8,122.67
32	6-24-25	64564		300.00	300.00
33	8- 8-25	64564	10,000.00		10,000.00
34	8-24-25	64564	4,867.78		4,867.78

None of these items ever passed in any manner through G. W. Peckham's Account.

1742 The Witness:

Respecting the items of purchase of certain royalties which I found in the name of F. O. Harrell, aggregating an expenditure of $8,000.00, I could find no payments made by Peckham and Harrell corresponding to the exact amounts. I did find transactions between Peckham and F. O. Harrell whereby Peckham had paid Harrell during this period of time substantial sums of money that were not identified; the first of those checks which were issued by the Royalty Company to acquire these properties; 95 and 96, was dated November 20, 1926, and the last one dated March 1, 1927. Between those two dates, I was only able to find two items. If I said this morning that I found numerous items or large sums, I was in error, but during the year 1926 and the year 1927, Mr. Peckham did make numerous payments to F. O. Harrell in considerable sums. But in the time elapsing between November 20 and March 11, I was only able to find one check from Peckham to F. O. Harrell, which is a check dated March 11, 1927 $500.00, and payable to F. O. Harrell, with the recitation "Balance of note on purchase of property."

Reverting back to the purchase of the Anderson Ranch and the Pointevant property whereby there is a difference in the expenditure and the tracing of the funds of $6.25 on the $11,000.00 item; these royalties that were purchased under those transactions were producing royalties or developing producing royalties. I made an analysis, the amount of royalties that the Wichita Royalty Company received from those properties was $10,174.51, being the north Anderson Ranch,
1743 Property No. 80. They had a deed to that property.

From my analysis there are certain transactions here that I did not have sufficient data, or were unable to account for, tracing of those funds from Mr. Peckham, from the Royalty Company into Mr. Peckham, and Mr. Peckham accounting for the same, among which was two items of $2,000.00 and $2,500.00, items 27 and 28.

In my report from October 8, 1925 to July 14, 1930, shown on page 1487. And the further item of $2,000.00 known as item 32, shown on page 1489. Items 58 and 59, the sale price of the Wilson Royalty and the Hattie Vaughan Royalty shown on page 1493 of that report, totaling $11,400.00. And the difference between the amount of payment made and Peckham deposited to his account, voucher notation on the note payable to the City National Bank and the amount actually spent by Peckham, that difference amounted to $1,929.67, I was unable to find. Those items which I have been unable to account for total $19,829.67. The difference between that and the ones Mr. Scannell made out and presented to the administrator in December, 1930, is $1.00.

The audit of Mr. Peckham's affairs were checked, but we could not classify the data as books; all that was available was a batch of checks, together with the bank statements which they happened to be in; a few of the bank statements from the Security National Bank, which we were able to find, and four or five statements from a bank in Olney, with which
1744 he did business and his deposit slips. We did not have all of the bank statements. He did business with the Security National Bank in Wichita Falls, City National Bank of Wichita Falls, Farmers State Bank of Olney, City National Bank of Olney, those were all we could find. We have six statements of the bank of Olney and three statements covering his entire account in the Security National Bank of Wichita Falls. We did have all of the books of the City National Bank reflecting Mr. Peckham's account both as to his liability and his deposits; also had, either copies of the original records of the Wichita Royalty Company, we had those. The Wichita Royalty Company kept a set of books, a complete set of records, well designed, a well designed system, sufficient to reflect at any and all times the condition of the company, the result of its operations, its assets and its liabilities, and the books are well kept. by an experienced and competent bookkeeper. The

books of the Wichita Royalty Company reflected each and all the transactions from 1923 to 1929, whereby the checks were issued and the funds passed from or to the Wichita Royalty Company. On the books of the Wichita Royalty Company there were check marks of different kinds, from 1923 to 1929.

The books of the Wichita Royalty Company reflect that they were engaged in the purchase of royalty interests. There was one journal missing of the Wichita Royalty Company books, and also one cash book, but Mr. Scannell has his cash received memorandum
1745 and his checks, from which can be made out this cash book in case it is needed. It would have helped if we had had the book, but it would have made it much easier if I had had the cash receipts memorandum supporting it; however, the life of that record did not render it impossible for me to make a correct analysis.

During this period of time I also found the notes George Peckham had paid Wichita Royalty Company various sums of money, in addition to those items set out in Plaintiff's Exhibits 212 and 212a, issued these checks (handing checks to counsel) to the Wichita Royalty Company. All of those checks are payable to the Wichita Royalty Company, drawn on G. W. Peckham's individual account and was paid out of that account and deposited to the account of Wichita Royalty Company, but I have not taken those into account in accounting for the transferred funds, or alleged transfer of funds from the Wichita Royalty Company to the account of G. W. Peckham. They would not throw any light on the transaction except to show that Mr. Peckham was turning over to the Royalty Company different moneys or royalties that came into his hands for the account of the Royalty Company.

Mr. Humphrey:

In this connection and with this testimony we offer in evidence this group of checks, marked "Plaintiff's Exhibit 214.

PLAINTIFF'S EXHIBIT 214.

(This being a series of checks drawn on City National Bank, City National Bank of Commerce or City National Bank of Wichita Falls, all being signed by G. W. Peckham, bearing proper indorsements, and showing for what checks were drawn, payable to Wichita Royalty Co.)

Date	Amount	Perforated	Teller	To Cover
8-14-23	2,356.74	8-14-23	8	Oil runs 1-4 to 7-15-23 on Eagle Pitcher sold by Fain to WRCo.
8-14-23	1,309.47	8-14-23	8	Oil runs 1-9 to 7-15-23 on 1/64 Eagle Pitcher sold by WHP to WRCo.
8-14-23	5,736.16	8-14-23	8	Oil runs 12-7-22 to 7-15-23 on 1/32 Ellis Holmes sold by WHP to WRCo.
8-14-23	1,309.47	8-14-23	8	Oil runs 1-9 to 7-15-23 on 1/64 Eagle Pitcher sold by Fain to WRCo.
1-16-23	855.54	1-18-23		Oil runs on 9 acres Hattie Vaughn.
3-17-23	500.00	3-19-23	8	Payment on 20 acres R..... Royalty
3- 7-23	500.00	3-16-23	8	On contr with Interstate Royalty.
10-16-24	45.00	10-20-24	7	Texhoma runs Wilson Royalty Co.
10-16-24	47.34	10-20-24	7	Texhoma runs WRC Sept. 1 to 15
10-16-24	54.37	10-20-24	7	Texhoma runs Wilson Roy last ½ August
9- 3-24	52.83	9- 9-24	8	Texhoma runs Staniforth runs first half August

Date	Amount	Perforated	Teller	To Cover
5-26-24	538.30	5-27-24	7	Panhandle runs R. M. F. lease last half April.
5-28-24	138.75	6- 3-24	8	Texhoma runs Staniforth lease last half of May
4-29-24	206.58	5- 7-24	8	Texhoma runs first ½ April Wilson Royalty
5-12-26	182.44	5-15-24	7	Texhoma runs ½ April Wilson Roy.
5- 2-24	480.04	5- 7-24	8	Panhandle runs last half April R. M. F. lease.
4-24-24	375.55	4-29-24	8	Panhandle runs R. M. F. lease last half of March
6-12-24	74.63	6-14-24	8	Texhoma runs last half May Wilson Royalty
11-12-24	47.08	11-13-24	8	Texhoma runs Wilson Roy 10-16 to 10-31.
10-28-24	39.05	11- 8-24	8	Texhoma runs Oct 1-15 Wilson roy.
12-13-24	33.23	12-16-24	7	Texhoma last ½ Nov. Wilson roy.
12-30-24	34.66	1-10-25	8	Texhoma runs Wilsoy roy. Dec. 1-15
1-13-25	52.27	1-16-25	8	Refund from McCray on Wilson roy.
1-13-25	31.04	1-16-25	8	Texhoma runs Dec. 16-31 Wilson roy.
11-28-24	36.03	11-29-24	8	Texhoma runs Nov. 1-15 Wilson roy.
12- 9-24	197.03	12-10-24	6	Texhoma storage Wilson royalty
3- 7-23	259.92	3-16-23	8	Hattie Vaughan collected 3-3-23
2-16-23	449.82	2-21-23	1	Oil runs 9 ac. Hattie Vaughan Collected 2-12-23
1-13-23	240.84	1-16-23	3	Oil runs (marked "P. Ex. 43")
6-28-24	55.64	7-18-24	8	1st half June runs Texhoma on Staniforth lease

7- 5-24	135.42	7- 9-24	8	Griswold runs Mch. and Apr. RMF lease
4- 9-24	141.38	4-16-24	8	Oil runs—Texhoma—on Staniforth lease first half March
4- 9-24	525.07	4-16-24	8	Oil runs Panhandle on RMF 1st half of March
9- 5-24	751.41	9- 9-24	8	Panhandle runs May and first three days June Wilson Royalty
9- 3-24	34.75	9- 9-24	8	Texhoma runs Staniforth lease last half July
7-23-24	40.04	8- 7-24	8	Texhoma runs last half June Wilson Royalty
7-31-24	35.78	8- 7-24	8	Texhoma 1st half July Wilson roy.
2- 6-24	14.15	2- 8-24	–	Gas on Ellis Holmes for Sept. 123.
4-15-24	184.54	4-16-24	8	Oil runs last ½ March Texhoma on Staniforth lease Archer Co.
8-15-23	199.22	8-12-23	8	Oil runs on 78(?) acres R. T. Eagle Pitcher 7-16 to 7-31-23
2-14-23	3,000.00	2-15-23	2	Payment on royalty sold to Harrell
2- 6-23	566.37	2-21-23	1	Oil runs on 4 ac. Hattie Vaughan collected 1-27-23
5-25-23	302.98	5-28-23	8	Oil runs on Grimshaw for April runs by Humble
5-15-23	234.05	5-16-23		Oil runs on Grimshaw March 12 to 3-23. (Marked "P. Ex. 158")

The Witness:

The check you now hand me, in addition to the twenty-two thousand, four hundred and six dollars, and fifty cents, one of the checks for $8,000.00 payable to the Wichita Royalty Company on August 14, 1923; cashier's check for $1,033.33 issued to G. W. Peckham on July 25, 1923, and $1,026.67 issued to the Wichita Royalty Company on June 29, 1923, were purchased with the individual funds of G. W. Peckham and deposited to the credit of the Wichita Royalty Company. I have the individual checks of G. W. Peckham that went to the

1749 purchase of those cashier's checks, and I now hand them to you.

Mr. Humphrey:

We offer these checks in connection with the cashier's checks Plaintiff's Exhibit No. 215.

PLAINTIFF'S EXHIBIT 215.

(Cashier's checks and corresponding checks of Peckham, G. W.) City National Bank No. 79528 Wichita Falls, Texas Aug 14 1923 Pay to the order of Wichita Royalty Company $8,800.30 Cashier's check (Signed) W. L. Robertson For Deposit Only, G. W. Peckham, as Trustee, Wichita Royalty Company. (Perforated) Paid 8-14-23

Wichita Falls, Texas 8-14-1923 No. .... "18" City National Bank of Commerce Pay to City Nat'l Bank or bearer $8,800.30 (Signed) G. W. Peckham (Perforated) Paid 8-14-23 No indorsements.

1750 Wichita Falls, Texas Jul 25, 1923 (Cashier's Check) No. 78885 Pay to the order of G. W. Peckham $1033.33 Cashiers' Check (Signed) O. Y. Jones (?) Vice President Cashier Ass't Cashier (Indorsed G. W. Peckham by E. E. Scannell For Deposit Only, G. W. Peckham as Trustee Wichita Royalty Co.

Wichita Falls, Texas 7-25-1923 No. ..... "18" City National Bank of Commerce Pay to City Nat'l Bank or bearer $1033.33 (Perforated) 7-25-23 No indorsements (Signed) G. W. Peckham

Cashier's Check City National Bank of Commerce No. 78021 Wichita Falls, Texas Jun 29, 1923 Pay to the order of Wichita Royalty Co. $1026.67 Cashier's Check (Signed) W. L. Robertson, Vice President For Deposit Only, G. W. Peckham, as Trustee, Wichita Royalty Co. (Perforated) Paid 6-29-23

Wichita Falls, Texas 6-29-1923 No. .... Check "18" City National Bank of Commerce Pay to City Nat'l Bank or bearer $1026.67 (Signed) G. W. Peckham Draft for Wichita Royalty on Harrell payment on Ellis Holman (rforated) Paid 6-2-23 No indorsements.

1751 The Witness:

The checks in Plaintiff's Exhibit 215 aggregate $10,860.30.

Cross Examination.

By Mr. Rogers:

I stated, that the Wichita Royalty Company's books were complete and well kept, by competent bookkeepers. It is not my testimony that any of these items which have now been identified and introduced in evidence as Plaintiff's Exhibits 214 and 215, have anything to do with a proper statement of the account between Wichita Royalty Company and G. W. Peckham, except in Mr. Scannell's testimony he stated that checks Nos. 46, 47, 48 and 49, issued by the Wichita Royalty Company on August 14, 1924, were deposited to G. W. Peckham's personal account; those checks were issued to B. L. Fain and W. H. Peckham to that extent and for that reason they are taking them into consideration. He included that in the total funds transferred from the

Wichita Royalty Company to G. W. Peckham on the same date G. W. Peckham put $19,512.14 back into the Royalty Company, the effect is that George Peckham returned that amount, where on the same day on which he was alleged to have received $15,000.00 and some odd dollars. The purpose of the introduction of these checks, Plaintiff's Exhibits 14 and 15, is that on that date George Peckham is alleged to have taken into his bank account by indirection, $15,033.81, and on the same day he returned to the Wichita Royalty Company $19,512.14—I merely set those up for what they are worth.

1752 The notations show he was returning—the check for $2,356.74 issued by George Peckham to the Wichita Royalty Company states in the left hand corner, "Oil runs, 1-9- to 7-15-23, on 9/320ths Eagle Pitcher, sold by Fain to the Wichita Royalty Company. On the same date, August 14, 1923, payable to the Wichita Royalty payable out of George Peckham's personal fund for $1,309.47, bears the explanation, "Oil runs January 9, to July 15, 1923, on 1/64th Eagle Pitcher, sold by W. H. P. to W. R. Co." On the same day G. W. Peckham issued his personal check to Wichita Royalty Company for $5,736.16, bearing the notation, "Oil runs, 12-7-22, to 7-15-23, on 1/32nd, Ellis Holmes, sold by W. H. P. to W. R. Co." On the same day G. W. Peckham issued to the Wichita Royalty Company a check on his personal account in the amount of $1,309.47, with the notation, "oil runs January 9, to July 15, 1923, on 1/64th, Eagle Pitcher, sold by Fain to W. R. Co." On the same day G. W. Peckham, with a check paid out of his personal funds, on deposit in the City National Bank, bought a cashier's check from the City National Bank, being cashier's check No. 79,528, for $8,800.30, and payable to the Wichita Royalty Company, which cashier's check was deposited in the Wichita Royalty Company's bank account at the City National Bank, making a total of checks and moneys which Peckham transferred out of his personal funds on deposit, City National Bank, to the Wichita Royalty Company, in the amount of $19,-

512.14. I did not go into all of these items until after the beginning of the taking of this testimony,
1753 and after Mr. Scannell testified that their checks Nos. 46, 47, 48 and 49, had been diverted to Mr. Peckham's personal account.

Re-Direct Examination.

By Mr. Humphrey:

I now turn to check for $2,500.00, shown on page 1736, of Plaintiff's Exhibit 212a, wherein I testified that voucher of the Wichita Royalty Company showed payment of $2,500.00 for an option for 1/16th interest in twenty acres of lot 14, block 27, American Tribune New Colony lands in Archer County, Texas; I supported that by a corresponding check from G. W. Peckham of $2,500.00, A. F. Bowden, since I gave my testimony I have secured the record and examined the original records of cash received by the Wichita Royalty Company as of February 16, 1924. I did not have that record at the time I made up that report. With reference to the return of this sum, $2,500.00, the original record of cash received, No. 58, being the original cash record of Wichita Royalty Company, shows that on February 16, 1924, they received from G. W. Peckham the sum of $2,500.00, with the explanation as follows: "Refund of option of 1/8 of Mayer-Staniforth, 20 acre lease, L. F. Wilson Lands, Archer County, Texas," and was deposited to the account of Wichita Royalty Company in the City National Bank on February 16, 1924; I know that from their original record of cash received, a copy of the deposit slip covering their deposit of funds on February 15, 1924.

1754 J. T. HARRELL, recalled, for further examination by Mr. Boone, testified as follows:

When I was on the stand the other day there was introduced in evidence Defendant's Exhibit 154, being

a check dated January 8, 1926, for $2,567.75, payable to the Curlee land and signed G. W. Peckham, and likewise, a similar check on the same date, Exhibit 155, and I was requested to find the difference between the amount of the deposits going to W. S. Curlee on January 8, 1926, which was $4,749.10 and this $5,135.50. After I left the witness stand I called Mr. Curlee to find out what became of the difference between those amounts —that was a matter of commission and the item of revenue. commission being paid to the agent who handled the sale, and the revenue of $5.00, went on the deed. The agents who received the commission were Kemp, Welch, and Richardson. After obtaining that information from Mr. Curlee, I got the deposit slip for the same date in the City National Bank of Welch, Richardson and Kemp on January 8, 1926, which shows $381.40 deposited to their account. That is the commission agents Mr. Curlee informed I obtained the commission from. In addition thereto I have examined the deed, Defendant's Exhibit 14, and there is $5.00 revenue stamps required on the deed.

The $381.42 and $5.00 is exactly, to the penny, the difference between $4,749.10 and the amount that Mr. Peckham and I paid, to-wit, $5,135.50.

1755 Mr. Boone:

I offer the deposit slip in evidence, in connection with Defendant's Exhibits 154 and 155, and it is agreed between Mr. Rogers and myself, as I understand it, that this will be sufficient, without bringing Mr. Curlee here to testify. Instrument marked Defendant's Exhibit 164.

DEFENDANT'S EXHIBIT 164.

City National Bank Deposited By Welch, Richardson & Kemp, Wichita Falls, 1-8-1926 Checks as follows: Harrell & Peckham $381.40 Original 3 Total $ "19"

The Witness:

Mr. Rogers asked me to bring my books that I kept for the year 1926, I don't know who kept these books but it is a transcript of my bank account, and all the books I kept during that time. I tender them to Mr. Rogers. This book consists of forty or fifty pages for the year 1926, I have never examined the books before Friday or Saturday of last week. After examining the books, I think I found a record of the Curlee check, it is listed by the bookkeeper under Curlee loan.

Mr. Boone:

I will ask that the check of that date be photostated, it is already introduced and I introduce it again, and ask that it be photostated, Defendant's Exhibit 165.

1756 DEFENDANT'S EXHIBIT 165.

Wichita Falls, Texas 1-8-1926 No. .... The City National Bank of Wichita Falls Pay to the order of Curlee Land $2567.75 (Signed) J. T. Harrell 1767.62 Perforated Paid 1-11-26

The Witness:

The amount charged for recording the warranty deed of Curlee to J. T. Harrell is $1.00, then I made additional payments on the outstanding indebtedne s of the Curlee land, and my bookkeeper placed that under real estate. On April 17, in the sum of $1,050.00, Curlee property, Harrell & Basham, Valley View Addition. I paid some additional expense to survey that land April 24, to E. S. Rest, Civil Engineer, $42.00. This book also reflects tne receipts that I obtained from the sale of the Stephens County Royalty, 1926, that is under recapitulation. The first payment in 1926, as reflected here is January 15, from Peckham, $535.69—no, it is $1,100.66, which is exactly one-half of the twenty two hundred and
1757 some odd dollars which Peckham gave on the second purchase of the Stephens Royalty. That

was put by my bookkeeper under the head of recapitulation. The next payment I received on the Stephens Royalty, January 25, one-half of $10,028.00. That shows on my books under the same heading, January 25, G. W. Peckham, $5,014.00. The next amount paid by me under the Stephens Royalty, February 2, shows under the same topic, Peckham note $50.00 interest, $2,550.00. Then in the month of March, my books reflect a note of $2,500.00, interest $30.00, making a total of $2,530.00 received from G. W. Peckham on March 6. On March 31, 1926, there was a check, which was put on my books April 1, showing on that date G. W. Peckham's credit of principal, $2,500.00 and $43.50 interest. That constitutes all of the payments that I received on the Stephens Royalty as reflected by my books during the year 1926.

I made an income tax return for 1926, it was made by Mr. Duncan. I have here the work sheets used by Mr. Duncan, which reflects a certain payment received from Mr. Peckham, in connection with the sale of the Vernon lease from which the notes were taken. These payments were properly 1925 income with the exception of interest on them received in 1926, which should be included in 1925. In re-checking that in filing the amended returns the notes were not dependent upon the oil—this work sheet No. C, I found that and it is the payment showing on page 1, the first one, sale lease in oil $1,100.66, under the title of income. The next is G. W. Peckham oil runs, Vernon Well, $5,014.00
1758 under the head of income. The next is the Peckham note, interest sale lease in oil 1925, $2,550.00, interest in income on work sheets. On page 2 of this work sheet, I find G. W. Peckham interest, $30.00, sale of oil in 1925, $2,530.00 under the head of income. Then in April it shows G. W. Peckham sale of oil in 1925, $2,500.00 interest $430.50 under the head of income. The work sheet here for 1926, as well as the carbon copy of the final report, shows the sale of royalty, the entire amount $7,500.00. I don't know whether that is correct or not, that is the records we found.

Re-Cross Examination.

By Mr. Rogers:

As I understand it from reading that comment at this time, as to whether it should have been income for 1925, it was a closed transaction, it was not oil runs. The income could have been the year in which the deal was closed, and therefore I could pay taxes on it for 1925, according to my memorandum. I cannot explain this, v thout having it checked, because I only got it yesterday. I do not remember selling Mr. Peckham $11.00 worth of property February 3, 1926, I don't know whether the $11.00 is for revenue stamps or not. I will try and look all of these matters up for you.

Mr. Rogers:

I offer in evidence the books of Mr. Harrell which reads as follows:

"February 3, G. W. Peckham, revenue stamps $11.00."

1759 The Witness:

That would indicate that on February 3, I gave G. W. Peckham a $11.00 check for revenue stamps. I will produce you the canceled checks if I can.

RAY F. BOMAR, a witness for the Plaintiff, being first duly sworn, examined in chief by Mr. Humphrey, testified as follows:

My name is Ray F. Bomar. I am in the banking business. Started in as a runner, filing clerk, bookkeeper and teller of the City National Bank. I was a teller in 1923, paying and receiving. During the years from 1923 to 1929, inclusive, the City National Bank had nine paying and receiving tellers. A paying and receiving teller receives deposits and cashes checks, receives money in the bank in the form of deposits, and

pays out money in the form of orders or checks drawn on the bank. In the payment of the checks, it is generally a rapid transaction. The note teller handles the loans and discounts. The note teller is not on the same side of the bank as the paying and receiving tellers in the City National Bank. It is a separate department. The paying and receiving tellers do not keep up with the amount of indebtedness that the depositor owes.

I knew G. W. Peckham during his lifetime, and received deposits from him as an employee of the City National Bank from 1923 up until the time of
1760 his death. I knew him reasonably well and knew his signature. I knew Mr. Peckham was trustee for the Wichita Royalty Company and Mr. Scannell was a representative of that company. The Wichita Royalty Company from 1923, up until the time George Peckham died, carried a bank account in the City National Bank. Mr. Scannell and Mr. Peckham both had authority to draw checks on that account. I know something of the nature of this lawsuit and have testified in this case before. I was the receiving and paying teller that received a great number of the checks which were transferred from the account of the Wichita Royalty Company to the account of George W. Peckham. I am teller No. 7. This check which you now hand me, drawn by the Wichita Royalty Company by E. E. Scannell, payable to G. W. Peckham for $500.00, that was handed to me and I gave Mr. Peckham credit for it, at his request. This is another one of the same date, and here is one for $400.00, I gave him credit for that also at Mr. Peckham's request. Here is a check dated 5-11-23, for $2,533.33, payable to George Peckham. I handled that transaction. I have verified all of these deposit slips from the tellers sheet. We have a sheet that shows the deposits we have received during the day and since this suit came up, I have taken those deposit slips and verified them with the teller that handled the deposit. I gave George Peckham credit for this check drawn in his favor by E. E. Scannell for $2,533.33.

both of these slips are in the handwriting of Mr. Peckham. Here is another one, I received that check,
1761 and gave Mr. Peckham credit for it, at his request. It is in his handwriting. Here is a check for $12,000.00, I received this deposit, that is Defendant's Exhibit 128, payable to the order of B. L. Fain, signed by the Wichita Royalty Company by E. E. Scannell for trustee. I gave Mr. Peckham credit for that item at his request, it bears the proper indorsement of B. L. Fain across the back of it. The deposit slip was made out by G. W. Peckham himself. All of these transfers were made at the request of Mr. Peckham, many times he made out the deposit slip himself. At the time I gave Mr. Peckham credit for these various items, they were all drawn and signed by a person authorized to sign their name, E. E. Scannell or Peckham, generally Mr. Scannell, and were payable either to the bank or Peckham or some other person who had indorsed them. At the time I made the transfers I know the general reputation of George Peckham for honesty and fair dealings in this city, and that was good. I had no knowledge of any intention on the part of Mr. Peckham, or any suspicion of any intention on his part to misuse or apply the funds at the time he had requested me to give him credit for these various items. At the time I made these transfers, I did not have time to look up and see what his balance was, nor did I undertake to do it. I did not look into his liability with the bank. I had nothing to do with the keeping of the books, as to his liability. It is not customary for a teller who receives money on deposit from a customer, to check
1762 up and see how much the customer owes the bank.

Here is a $6,000.00 check that is payable to G. W. Peckham, that was one I made out myself, check dated April 24, 1925, No. 385, I gave Mr. Peckham credit for that amount as shown on the deposit, slip, at his request. Mr. Peckham would bring these checks to me and ask me for individual credit and I would give

it to him. It would be hard to estimate as to how many items a teller handled in a day, that is all we did, was to handle deposits from the time the bank opened until it closed, and there were hundreds of them.

Cross Examination.

By Mr. Rogers:

During the period of time inquired about by Mr. Humphrey, each paying and receiving teller had a group of letters, being the beginning letter of the surname of the patrons of the bank, that came to the window. The patrons I served were under the names to begin with P, and as a general rule a customer of the bank whose name begun with P would come to my window. I knew during this period of time that the Wichita Royalty Company carried a bank account in its own name, against which checks were drawn by W. G. Peckham as trustee, or E. E. Scannell for the trustee. Likewise, I knew that G. W. Peckham, as an individual carried his account there to his own name. I knew that from time to time I took deposits, that Mr. Peckham was transferring funds from the Wichita Royalty Company to his personal account; I did not make any inquiry or any

1763 investigation of any kind or character as to why Mr. Peckham was transferring those funds. I could not say that I am familiar with the signature of B. L. Fain, I don't remember whether I was at that time or not. I do not know whether this is the indorsement on Defendant's Exhibit 138 or not, the deposit slip behind it is in the original handwriting of G. W. Peckham. That check was charged against the Wichita Royalty Company's account and deposited to Mr. Peckham's personal account. I do not know whether this is the indorsement of B. L. Fain on Wichita Royalty Company's check No. 1,252, payable to B. L. Fain or not, it is not in the handwriting as the man who wrote the name B. L. Fain. The paying and receiving tellers ascertain whether

or not an account is sufficient to pay an item presented by looking it up on the books. We never made any special effort to keep up with the deposit books and accounts of various persons whom we served, we did make an effort to ascertain from time to time whether or not a deposit account was sufficient in itself to stand a charge in the amount of a check or checks that were presented for payment. When Mr. Peckham would request the transfer of funds from the Wichita Royalty Company account to his own, I would honor his deposit request; as against our deposit in his personal account, I would honor such checks payable to third parties in such amounts as Mr. Peckham, or the payees of these checks, might present for payment. I did not undertake to make any investigation as to whether Mr.

Peckham was transferring these funds from one
1764 account to the other.

Re-Direct Examination.

By Mr. Humphrey:

These checks show to be voucher checks, they are perforated. Many institutions handle their business on voucher check systems. The vouchers are sometimes detached when the checks are handed to us for deposit. Supposing at the time Mr. Peckham transferred this $6,000.00 on the check of the Wichita Royalty Company dated June 4, 1925, and payable to the order of G. W. Peckham, at the time I gave him credit for it, the Wichita Royalty Company did not have $6,000.00 in its deposit balance, I ordinarily would not look up that check, as his deposit balance, at the time the check was given to me to determine the amount of his deposit balance, however, I would know in a general way what customers checks were good. If this check was not good, then that check would be cut back at the close of business that day, because that is when all the items were sent back—that is the final payment. If at the

close of business on June 24, 1925, it is shown that the Wichita Royalty Company's check was not good, I would charge Peckham's account back with this check. We did not make as careful an examination of the deposit balance of the drawers of the check, where they went to the credit of some other depositor in our bank, as we would if we were getting cash on it.

You now hand me a group of deposit slips, which it has been agreed were deposited to the credit of G. W. Peckham upon checks drawn upon the de-
1765 posit account of Wichita Royalty Company, signed by the trustee or E. E. Scannell for the trustee, and deposited to the credit of G. W. Peckham or some other person who indorsed the same—twenty-two deposit slips, showing from March 1, 1923, up into 1925, and 1926, and 1927 and 1928, taken by the tellers who are not now employed by the City National Bank. I can identify twelve of these deposit slips, out of the twenty-one, that are in the handwriting of G. W. Peckham, the remainder of them, I should judge, are in the handwriting of the tellers who received them.

Re-Cross Examination.

By Mr. Rogers:

Of those twelve in the handwriting of G. W. Peckham, seven of them are salary in the amount of $500.00, or $400.00. A few of them were written by me. I will say that with respect to the cashing of checks drawn upon the Wichita Royalty Company account, and with respect to the charging of checks to his personal account when drawn upon it, or with respect to the deposit of Wichita Royalty Company's money into his account, or his money into the Wichita Royalty Company account, I did not question G. W. Peckham but followed his instructions and made no inquiry as to why he was doing it.

Re-Direct Examination.

By Mr. Humphrey:

As far as I knew, Mr. Peckham was the sole trustee of the Wichita Royalty Company, I knew of no
1766 person who had any authority over him, and knew of nobody to go to if I wanted to question it, except Mr. Peckham. I never asked George Peckham if he was fixing to steal any money when he made a deposit.

Re-Direct Examination.

By Mr. Morrow:

Back in 1923, to 1929, inclusive, there were many people and concerns in Wichita Falls, that had what is known as the voucher form of remittances. If they were perforated, they were always detached before they were deposited.

Re-Cross Examination.

By Mr. Rogers:

All of the Royalty Company's checks presented to me for deposit to Peckham's account show at the top to be perforated, which ordinarily would mean that it was a voucher check, I never paid any attention to them. I have never read one of those notations on the back of a check, above the signature of the payee. I imagine I saw that notation, but I don't remember it. I did not ask Mr. Peckham what was written on the vouchers in his office.

Re-Direct Examination.

By Mr. Humphrey:

The tellers each had alphabetical letters over their windows but it was not compulsory, frequently a teller with the letter H, a customer whose name begins with

H would go to another window, the letter was
1767 placed there for the accommodation of the public.

Re-Direct Examination.

By Mr. Boone:

I testified with reference to Defendant's Exhibit 138, for $12,000.00, payable to B. L. Fain, I gave Mr. Peckham credit for it at his request. I don't know whether that is the signature of B. L. Fain or G. W. Peckham. Where a check was payable to a certain person and a man of integrity and outstanding honesty of G. W. Peckham, I never questioned the prior indorsement on it. There was nothing to lead me to believe that George Peckham was having checks forged, or that the payee's names were being forged on any bank—I have absolute confidence in George Peckham. Whenever those checks were presented, whether they bore the actual signature of B. L. Fain or not, or whoever they may have been, they were returned to the Wichita Royalty Company each month. I never heard of the Wichita Royalty Company, or anyone connected with that company, after this check was paid by the bank on February 2, 1924, or any other check payable, being questioned by the Wichita Royalty Company or anyone connected with it, until long after the death of George Peckham. If this signature was not the correct signature of B. L. Fain the Wichita Royalty Company never made any objection hereto. Whoever wrote the name of B. L. Fain on there, I don't know whether they had the authority or not. The same testimony applies to each and every check where there is a prior indorsement of G. W. Peckham.

1768 Re-Cross Examination.

By Mr. Rogers:

B. L. Fain still lives in Wichita Falls, as far as I know, I don't know whether he is living here now or

not. G. W. Peckham lived here and lived here all the time as far as I knew.

Agreement: Mr. Boone:

It is admitted that E. E. Scannell wrote the name of B. L. Fain on the back of the check I have just asked about, to-wit, No. 138.

It is agreed that the testimony of each of the paying and receiving tellers who handled these various items complained of would be the same as Mr. Bomar's testimony, as to the items handled by each of said tellers.

P. H. LAMBERT, recalled for further cross examination by Mr. Rogers, testified as follows:

I am a member of the Wichita Falls Bar, have been licensed as an attorney under the laws of the State of Texas since 1928, two years after I qualified as a Certified Public Accountant. Since October 15, I have worked seventy days on this matter, the reasonable and usual and customary compensation for work of that character in this vicinity at that time is approximately $25.00 per day. I expect to be paid reasonable com-
1769 pensation and have been paid $400.00. It has been a difficult task to run down the facts in this case, however, I have tried to avoid basing the figures I submit upon any assumption. I have tried to avoid basing my conclusions upon assumptions, just out of thin air, without something back of it. I have tried to determine what happened, and I have had to piece together the pieces in order to know what the pattern was with reference to what happened. I have had to go to the deed records and private offices not involved in this lawsuit. I have talked to a few witnesses. I have not talked to B. L. Fain, I know he lives here. W. H. Peckham lives here, I have not talked to him. I don't know where F. O. Harrell lives, it is my information that he lives in Oklahoma City. The books and records of J. T. Harrell have been available, his bank account

in particular, his liability ledger. I have examined his canceled checks as they pertained to the items brought up here in this trial. There were some of his canceled checks missing. We looked through the vaults in the City National Bank and in his office, and through the storage file. I remember particularly 1926 bank statements at the time we were searching for them. We thought contained the check which he paid for the Curlee land, that is how I happened to know that the 1926 checks were not available, could not be found. We found the Curlee checks down under a leaf in a black book which you asked for. I have not read the declaration of trust in this record, except as you mentioned it, I imagine it contains the provisions that the title is required
1770 to be acquired by the trustee, to be held in his name for the trustee. I think there are between four and seven properties altogether that did not stand in either the name of G. W. Peckham trustee or in Wichita Royalty Company—the deed records did not show they were in the name of either of them; some of the properties described as trust properties upon the books, by checks, issued and charged against the royalty company, stand in the names of other people, for example, F. O. Harrell and B. L. Fain. The records indicate that B. L. Fain and G. W. Peckham were closely associated in various deals. Such transactions as I find have been had between G. W. Peckham either individually or as trustee, with the Tolowa or the Wotola Companies were handled between B. L. Fain and G. W. Peckham, as to B. L. Fain's position, I do not know. Some of these properties stood in the name of G. W. Peckham. As to whether the Stephens Royalty stood in the name of J. T. Harrell and C. E. Basham for a period of time after G. W. Peckham had obtained $5,000.00 from the Royalty Company, I do not know. The instrument was dated January 1, and signed by Mr. Harrell, I don't know what date he signed it, he might have signed it on January 1, and his acknowledgment taken on January 24. In that case the title did not stand in his name. I could

not say whether Mr. Harrell executed the deed on January 1, or January 28, but the instrument is dated January 1, and the Wichita Royalty Company received the oil runs from the Stephens Royalty from January 1.

1771 I have been unable to find any contract in writing of any kind or character between the Wichita Royalty Company or between G. W. Peckham as purchasers on the one hand and J. T. Harrell and C. E. Basham on the other, concerning the purchase and sale, either the first or second sale. I have looked into the escrow files of the bank to determine whether or not there was an escrow on it, and I found none. They kept a record in a permanently bound book and I can determine definitely the escrow agreements in the bank from time to time. All I asked for with reference to Mr. Harrell's records was his liability account, his deposit accounts, and those things which dealt with the items as set up in the cross complaint. I knew Mr. Duncan in his lifetime, he is now dead. He was not a certified public accountant. He was a competent bookkeeper. I never saw that book we had here yesterday, in my life before. It is some loose leaf pages, that is the first time I ever saw it, was yesterday. I was sitting at the other end of the table and I didn't look at it. I suppose I did not ask Mr. Harrell for it, I didn't need it and didn't need to delve into his personal business to cover the items on that in full which were set out in the cross complaint.

As to the profits G. W. Peckham made on the various transactions between B. L. Fain and his associations, or with reference to any of these other properties as shown upon the trust books, you cannot tell. I believe I can tell whether he made a profit or loss, but as to making a

1772 definite statement as to the amount of that profit or the amount of that loss, it cannot be done. I don't think it can be done with the books Mr. Peckham had. He didn't have any books, he had checks and deposit slips. As to the amount which he owed Mr. Harrell or Mr. Harrell owed him, or the amount

B. L. Fain owed him, you could tell from his books. From any other source you could not determine the indebtedness of the other. Where they bought a bunch of property together and sold it out, as to how much profit belonged to one or the other, you could not tell from Mr. Peckham's records or any other records I examined, and I have examined all the records I could find. In seeking out the facts as I found them, where I placed them together, I endeavored to arrive at what appeared to be a correct result as to a fact. I have worked painstakingly and sought to unravel this conflicting amount of figures, and have worked sometimes until 2:00 o'clock in the morning and of course it is possible that some of my conclusions may be wrong in point of fact. I don't believe you can tell with prevision and accuracy the extent of profits that G. W. Peckham made in these various deals.

Mr. Rogers:

We now offer in evidence and ask that it be photostated, and that it be enlarged in the photostating process, if possible, the $2,500.00 check heretofore offered in evidence, payable to the order of Ray and Massie, and shows to have been paid by its perforation on or about May 6, 1925, DEFENDANT'S EXHIBIT 166:

(Exhibit 166 is the same as Plaintiff's Exhibit No. 173)

1773 The Witness:

I know Clifford Moores, he was engaged in the oil business here in 1925, and 1926. The Wichita Royalty Company did not have an oil and gas lease on the Routan land, they had a royalty on that land, which was conveyed to them by Ray and Massie. The only payment by G. W. Peckham from his personal account or otherwise, to Ray and Massie for that conveyance to the Wichita Royalty Company, that I can find, was the $2,500.00 check I have just mentioned, which was asked to be photostated Defendant's Exhibit 166, which has heretofore been of-

fered in evidence. The notation on it, "one-half, Allen Moran deal, Routan land." Mr. Peckham did not write a very legible hand, and I might be mistaken in reading the word "Moran." And I could be mistaken in reading the word "deal." The word "Moran" could be "Moore's." I cannot find anything that G. W. Peckham paid Ray and Massie for that conveyance, unless the $2,500.00 check which he gave Ray and Massie on May 5, was in payment of that Routan Royalty which they conveyed to the Wichita Royalty Company, I cannot find where he paid Ray and Massie for that royalty on that date by any other means—I did not run through all of the checks. The Wichita Royalty Company on that date gave this $2,500.00 check which Peckham deposited to his personal account, and that day he gave this $2,500.00 personal check that bears the notation of one-half interest in something. I do not remember what bank Ray and Massie deposited that $2,500.00 check in, but it was indorsed on the back, "For deposit, Ray and Massie."

1774 It is true that by an instrument dated March 22, 1923, filed for record April 14, 1923, and recorded in Volume 75, page 489 of the deed records of Archer County, Texas, J. R. Routan and wife, Sadie Routan, executed an oil and gas lease to J. H. James, conveying one hundred acres of land in Archer County, Texas, being a part of the Isaac Holman Survey and better described as one hundred acres off of the entire north side of block No. 9, of the Crawford pasture, as per plat of record in Archer County, Texas, containing one hundred acres, being an oil and gas lease for the primary term of five years providing for the usual royalties being what is known as a commercial lease, with a one dollar rental per acre. And Mr. James and his wife, on October 20, 1925, by instrument filed October 22, 1925, and recorded in Volume 106, Page 640, of the deed records of Archer County, Texas, assigned R. S. Allen and J. C. Strauss, said oil and gas lease in so far as it covered an undivided fifteen acre interest theretofore assigned to Mrs. Y. E. James by J. H. James.

Then by instrument of assignment dated May 2, 1925, filed for record May 8, 1925, and recorded in volume 99, page 579 of the deed records of Archer County, Texas Clifford Moores, J. C. Strauss, and Recess Allen, assigned to George B. Ray and J. H. Massie, said leasehold estate in so far as it covers the south forty acres of the original one hundred acre lease; and which assignment contains this paragraph, "It being expressly understood and agreed as a part of the consideration for the execution
1775 by assignors of this instrument and that the assignee expressly agreed that assignors do retain a one-eighth carried interest in the lease herein conveyed, that is to say, that assignors will first reimburse themselves for all necessary sums expended in drilling and developing said lease, after which assignors are to receive one-eighth of the assignees' seven-eighths total production to the land or lease on which is here assigned."

I have before me two checks, additional to May 5, 1925, $2,500.00 check by G. W. Peckham to the order of Ray and Massie, and check for $492.90, and one for $1.92.

Mr. Rogers:
I offer the checks in evidence.

DEFENDANT'S EXHIBIT 167 & 168.

Wichita Falls, Texas 9-23-1925 No. .... The City National Bank of Wichita Falls Pay to the order of Ray and Massie $1.92 Bill in full Routon Well 1 Dry hole (Signed) G. W. Peckham Pay to the Order of Security Nat'l Bank Ray & Massie By Butler (Perforated) Paid 9-25-25 "2"

Wichita Falls, Texas 6-26-1925 No. .... The City National Bank of Wichita Falls Pay to the order of Ray and Massie $492.90 1/12 of expense Routon Well No. 1, Dry Hole. (Signed) G. W. Peckham (Indorsed) pay to the Order of Security National Bank Ray & Massie (Perforated) Paid 6-29-25 "3" By Butler.

1776 The Witness:
The check you now hand me for $30,000.00 from Ray and Massie to Strauss, Allen and Mooers, dated May 2, 1925, seems to be the sum they paid for the forty acre Routan lease.

Mr. Rogers:
We offer the instrument in evidence and ask that it be photostated.

DEFENDANT'S EXHIBIT 169.

(Check) Wichita Falls, Texas 5-2-1925 No. 359 The Security National Bank Pay to the order of J. C. Strauss Reese S. Allen & Cliff Mooers $30,000.00 40 acres lse Ray & Massie J. B. Routon land Archer Co., Texas, By Geo. B. Ray.

1777 The Witness:
1/12th of that $30,000.00 would be $2,500.00. The check paid Ray and Massie on May 5, 1925, was for $2,500.00, and bore on it a 1/12 interest in the same deal.

These deposit slips which you now hand me, show on their face that that money was received for a 1/12 interest in the Routan well, cost and deed. And these checks for $2,500.00, $492.90, and $1.92, were deposited as evidenced by the deposit slips in the Security National Bank to the credit of Ray and Massie.

Mr. Rogers:
We offer the deposit slips in evidence, DEFENDANT'S EXHIBIT 170.

Deposited in The Security National Bank, Wichita Falls, Texas, By Ray & Massie 9-24-25, Checks as follows:

G. W. Peckham bal in full on Routon Well No. 1 (Dry hole)	1.92
Dale Oil & Ref. Co. oil runs Bond lse 1365.54 @ 1.95	2,662.80
By Ryan "7"	2,664.72

Deposited in The Security National Bank, Wichita Falls, Texas by Ray & Massie 6-27-25 Checks as follows:

Geo W. Peckham 1/2 of exp on Routon Well No. 1 dry hole	$492.90
By EP "Entered 66 Journal" Total	$492.90

1778 Deposited in The Security National Bank, Wichita Falls, Texas By Ray & Massie 5-5-25 Checks as follows:

Muse & Robertson 3/12 int. Routan Lse	7,500.00
G. W. Peckham 1/12 int. in Routan Lease	2,500.00
(47) By Ryan	10,000.00

1779 The Witness:

Nevertheless, Judge Rogers, on that date Ray and Massie executed that royalty deed and delivered it to the Royalty Company. The one that was covering the property that they specified in the check, they issued to George Peckham. As shown by my report, on the same day, $2,500.00 went into Mr. Peckham's account, the same amount went out to Ray and Massie in payment of the interest which Ray and Massie conveyed to the Wichita Royalty Company, George Peckham was then paying for his own interest in the lease, and not a royalty interest. If the check is not in payment for that royalty,

I don't know whether George Peckham paid Ray and Massie $10,000.00 for the interest they conveyed to the Royalty Company or whether he paid them $2,500.00. If Ray and Massie made a conveyance they got their money for it. I do not think the original deed from the Royalty owners recited that G. W. Peckham was one of the grantees, he might be possibly one of the undisclosed owners, because I have found him showing up in instruments without any record title himself. This instrument which you now show me, indicates that G. W. Peckham had a 1/12 interest in the lease and well, it is from the office of Ray and Massie, an expense account incident to the drilling of the well. His check, Defendan''s Exhibit 168, for $492.90, expressly says that his 1/12th interest Routan Well No. 1, Dry hole.

Mr. Rogers:

We offer the instrument in evidence, Defendant's Exhibit 171.

DEFENDANT'S EXHIBIT 171.

Ray & Massie Expense Account.

Routon Well #1 (Dry Hole.)

Date	Ck. No.	Name	Item	Amount
5-22-25	509	Gray Brothers	Building derrick	$ 136.68
5-30-25	523	K-M-A Fuel Oil Co.	Fuel oil	453.80
6- 8-25	601	K-M-A Fuel Oil Co.	Fuel Oil	144.00
6-11-25	591	Clifford Mooers	Water 18 days	270.00
6-15-25	613	Clifford Mooers	Slush pit & thribble boards	52.50
6- 8-25	590	Clifford Mooers	Drilling well 1370 ft.	2,975.00
5-30-25	525	Butler & Gragg	Casing 1285.2" ft.	1,060.25
5-16-25	457	E. R. Smith	Labor	100.00
5-30-25	450	J. J. Eagan	Hauling derrick	48.00
5-30-25	488	S. C. Seagraves	Hauling pump	8.00
5-30-25	490	C. D. Shamburger	Derrick pattern	401.81
6-10-25	527	E. R. Smyth	Labor	50.00
6- 1-25	618	Independent Torpedo Co.	Shooting casing	146.00
6- 1-25	560	H. Davenport	Hauling casing	37.50
6- 1-25	656	Producers Supply Co.	Invoices #42255 #42111 Casing shoe and 2 casing nipples and 2 casing couplings	31.25
				$5,914.79

1534

Muse and Robertson	3/12th	1,478.70
George Peckham	1/12th	492.90
Ray & Massie	8/12	3,943.19
		5,914.70

1781 The Witness:

I do not remember seeing any notation in the black book, kept by Mr. Peckham, in his own handwriting, in respect to the Allen, Moores, Strauss transaction, and I looked through that thing numerous times, and on different occasions, of course, I could have missed it, because he would write one year in the back and then one or two years in the middle and scratch all over it. I have found no instrument in writing, other than the conveyances themselves, all the instruments taken into consideration as a whole, that shows that the Curlee tract was a part of the consideration for the conveyance of Stephens Royalty to the Wichita Royalty Company—by those instruments I mean the deed from Peckham to Harrell and Basham and deed from Harrell and Basham to Wichita Royalty Company, the revenue stamps, and the deed from Peckham to the Royalty Company, the checks and deposit slips evidencing the consideration. I have considered the revenue stamps only to verify the amount of consideration, not to establish it—I do not think I have attached undue significance to revenue stamps. The 1926 bank statement of Mr. Harrell could not be found, therefore, I do not have the check of J. T. Harrell for $11.00, dated February 3, 1926, shown upon Mr. Harrell's books to be in payment to Peckham for revenue stamps. I have never looked for that check. The check I was looking for in January, 1926, was drawn in payment of the Curlee land.

1782 It Is Agreed that the $11.00 shown paid by J. T. Harrell to G. W. Peckham on February 3, 1926, was the amount of money that George Peckham collected off of Mr. Harrell for his one-half of the revenue stamps

going to and on the deed from Harrell & Basham to the Wichita Royalty Company, known as the second deal in the Stephens royalty.

The Witness:

I have not found anything in G. W. Peckham's books, bank statement, canceled checks or otherwise, where he paid for revenue stamps to be put on the Stephens Royalty about that time. $22.00 would be the proper amount of revenue stamps for $22,000.00. At eight percent interest it would take $22,000.00 one month and eleven days to earn $200.44, the time to earn $201.32, would lie between one month and eleven days and one month and twelve days. In my schedule I list that $201.32 as principal, because the notation on G. W. Peckham's check and the deposit slip, showing where Mr. Harrell and Mr. Basham took that money into their respective accounts.

The books which you exhibit to me, kept by Mr. Harrell is a loose leaf book, kept on the typewriter. The first item in this Stephens Royalty deal appears on January 8, in Mr. Harrell's as a payment of $2,567.75, which shows, Curlee loan. That item is listed under the general classification of Bills receivable. On Mr. Harrell's books he has the Curlee item listed as an asset at $2,567.75. He does not have the purchase price listed. This book of Mr. Harrell's appears to be a statement of his cash receipts and disbursements for the entire year, it is not a complete set of books kept in bookkeeping form. That is the only record Mr. Harrell has that I know of. Mr. Peckham did not keep a complete set of books, but if he had had a book like this it would have been much easier to tell what he did, there is no explanation on many of the items in Mr. Peckham's books. The Wichita Royalty Company kept a good set of books, they tied into each other and balanced.

1783

I find here Mr. Harrell's book on January 9, he paid the county clerk of Wichita County $1.00 for filing warranty deed to the Curlee land, shown under recording fees. On January 15, he shows to have received from Peckham

$1,100.66, under recapitulation and credits, that means a recapitulation of his deposit slip. If a bookkeeper or an accountant writes a good, legible hand, it is a little easier to keep the books in handwriting, it takes less time.

I understand that Mr. George Peckham and Mr. Harrell were good friends on January 1, 1926. Mr. Harrell was the chief executive officer of the bank, Mr. Peckham trustee of the Wichita Royalty Company. They had jointly acquired, with the view of developing, the Marlborough Addition, prior to January 1, 1926, also other interests. At that time they had acquired and were acquiring jointly what was known as the Curlee tract. Mr. Harrell testified the other day that he must have sold Mr. Peckham an interest in something in New
1784 Mexico. Mr. Harrell and Mr. Basham owned an undivided interest in a producing royalty in Wilbarger County known as the Stephens Royalty on January 1, 1926, Mr. Peckham acquired it. Mr. Harrell on January 1, 1926, owed the bank $7,500.00, that indebtedness was increased on January 11, 1926, to $10,560.00; eight days later, on January 19, 1926, Mr. Harrell's indebtedness was again increased to $15,574.44. On the same day George Peckham's liability to the bank amounted to $28,050.00.

I exhibit to you a check dated February 2, 1926, payable to J. T. Harrell and C. E. Basham, in the sum of $5,100.00, signed by Mr. Peckham and drawn on the plaintiff bank, paid February 2, 1926, that was deposited to Mr. Harrell's and Mr. Basham's account, and was in payment of a note executed in November, 1925, from G. W. Peckham to them, in his first purchase of Stephens Royalty; at that time Mr. Peckham and Mr. Harrell were jointly liable upon the original purchase price for the acquisition of the Marlborough property; that total indebtedness was approximately $52,939.00. At that time, January 1, 1926, Wichita Royalty Company was not indebted to the City National Bank, aside from obligations on oil payments arising out of the purchase of their property, they did not show to owe any notes payable. I am

unable to determine whether the negotiations began and were concluded for the purchase and sale of the second interest in the Stephens Royalty. For this
1785 second sale, G. W. Peckham, from his personal account, paid J. T. Harrell and C. E. Basham on January 5, 1926, $2,201.32. On January 25, 1926, he paid $10,028.00; on March 6, 1926, $5,060.00; on March 31, $5,087.00—included in those payments were items of interest. On January 16, the Royalty Company borrowed $15,000.00 from the City National Bank. The deed to the Curlee land is dated January 8, 1926, which recites a cash consideration of $4,814.00 and the assumption of certain notes. At the beginning of business January 4, 1926, G. W. Peckham's personal balance was $878.70. On that day Wichita Royalty Company check No. 452, was drawn on the Plaintiff bank payable to the order of G. W. Peckham for $5,000.00 and deposited to the personal account of G. W. Peckham in the plaintiff bank. On the next day, January 5, 1926, G. W. Peckham paid the Highland Irrigation Company $812.00. The $812.00 was paid out of G. W. Peckham's individual account and it was paid necessarily out of this $5,000.00 which the Royalty Company issued to G. W. Peckham as part of the purchase price of the Stephens Royalty—the $812.00 was paid to the Highland Irrigation Company as evidenced by the charge to G. W. Peckham's individual account. There remained on January 5, 1926, in G. W. Peckham's account, only the proceeds of that $5,000.00. The balance in his account decreased to January 11, and at the beginning of business on that day it consisted of $2,356.05 of funds originating with that $5,000.00 check, to be exact $2,296.30. That is the day G. W. Peckham issued his check for $2,567.75 in payment for the Curlee land, his interest in that
1786 land. There was another check given to Peckham on that day, No. 458, for $5,000.00, in payment of the Stephens Royalty but for the Wichita Royalty Company, that is what the royalty company books reflect. The next day Mr. Peckham's account still consisted entirely of the proceeds of those two transfers of

funds, if you charge his other funds, his other checks. On January 12, he paid Highland Irrigation Company $454.50, his part of the purchase price of some land, which he and Mr. Harrell and W. H. Peckham and Mr. Kemp then bought, part of the Marlborough Addition, being a small purchase after the main purchase in the fall of 1925. On January 16, 1926, Wichita Royalty Company was charged upon its liability with the bank $15,300.00, upon a note dated January 16, 1926, and signed by the Wichita Royalty Company by G. W. Peckham, trustee. The Wichita Royalty Company got credit for the proceeds of that loan on the 18th, I do not know why they didn't get credit when that obligation is dated, on the 16th, unless it was Saturday or preceded a holiday. On January 16, 1926, G. W. Peckham paid Mr. Harrell and Mr. Basham $2,201.32, of that amount approximately $1,362.87 was the proceeds of transferred funds, applying the minimum balance rule, that sum was applied to pay this check and that sum arose out of the payment from the Wichita Royalty Company to G. W. Peckham for the Stephens Royalty. Trust check No. 461 for $15,769.07, payable to the order of the Plaintiff bank was deposited to G. W. Peckham's account on January 18, 1926. G. W. Peckham did not
1787 make another personal deposit between that date and January 25, 1926. During that period that account consisted wholly of the proceeds of the $15,769.07 check transferred from the Royalty Company's account. On that date G. W. Peckham, from the commingled account, paid J. T. Harrell and C. E. Basham $10,028.00, one-half of which went to the personal account of J. T. Harrell and the other to the account of C. E. Basham. J. T. Harrell's personal balance with the bank just before that deposit was $186.29. On January 18, Mr. Harrell owed the bank $10,560.00. On January 15, he owed the bank $15,574.44, including interest—he owed that amount of money to the bank at the beginning of business on January 25, 1926. On January 16, Mr. Harrell paid the bank on his personal indebtedness $5,006.67. $4,320.48 of this $5,014.00 note which he collected off of George Peckham

and used to pay his personal debt to the bank. About a week after that, on February 2, 1926, Wichita Royalty Company check No. 466, for $400.00, issued and deposited to Peckham's personal account; that day, from his commingled account he paid J. T. Harrell and C. E. Basham $5,100.00, in payment of a note which he owed Mr. Harrell and the Stephens Royalty on the first deal, executed by G. W. Peckham personally in November, 1925. I would say none of that $400.00 was used to pay that $5,100.00 note of Peckham to Harrell and Basham, because he had enough money in his account to pay the entire amount without the $400.00. That $5,100.00, all except $1,472.46 of it, was out of the $15,769.07 check which
1788 George Peckham received from the Wichita Royalty Company on January 18, 1926. On February 18, 1926, George Peckham paid the bank $550.00 from his individual account; then on February 27, 1926, trust check No. 477, for $400.00, was deposited to his commingled account. On March 1, 1926, G. W. Peckham owed the plaintiff bank $28,050.00 with interest, he had owed that amount since the middle of November, 1925. On July 7, 1925, Mr. Peckham owed the bank $27,500.00; the balance in G. W. Peckham's personal account at the beginning of business March 1, 1926, was $341.90. On March 1, J. T. Harrell owed the Bank, $7,060.00. W. H. Peckham is the brother of George Peckham, and was one of the original Marlborough owners. On March 1, he owed the bank $6.120.00 and his personal balance was $1043.46. W. H. Peckham was jointly liable with J. T. Harrell, G. W. Peckham, J. A. Kemp upon the original vendor lien notes in excess of $52,000.00 for the original purchase of land later to be subdivided and developed as Marlborough Addition. On March 1, Wichita Royalty Company's note record, that is, his liability account, was charged with $25,500.00; the Wichita Royalty Company's deposit account was credited with $25,000.00 that same day. That day G. W. Peckham's check for $11,811.85 was issued payable to the order of W. H. Peckham, that was the consideration for G. W. Peckham's acquiring his

brother's one-fourth interest. G. W. Peckham's personal balance on March 1, was $341.90. His account then was not sufficient to pay Bill Peckham's $11,000.00
1789 check. W. H. Peckham's $11,000.00 check was charged to the account of G. W. Peckham on March 9, 1926. Between March 1 and March 9, 1926, G. W. Peckham had a beginning balance of $225.20, March 6, which consisted of his salary check for $400.00. On that same day, trust check No. 478 for $17,623.70, payable to the City National Bank was issued in voucher form, as other checks. The records of the Wichita Royalty Company were caused to reflect that the purpose of that check was to acquire one-half interest in the Marlborough Addition and to pay for improvements. The $17,643.70 check was deposited to G. W. Peckham's account with the bank, March 6, 1926. At the time of this deposit, the account was made up of check No. 477 for $400.00, being Peckham's salary account paid to him by Wichita Royalty Company. On that same day G. W. Peckham drew a check against that commingled account for $5,060.00, payable to the order of J. T. Harrell and C. E. Basham, one-half of which was deposited to Mr. Harrell's account and the other half to Mr. Peckham's account with the plaintiff bank. On March 9, W. H. Peckham cashed a check for $11,811.85, and on the same day W. H. Peckham paid his entire indebtedness of $6,120.00, to the bank. Of that amount which W. H. Peckham paid the bank on his account on March 9, 1926, all except $518.50 was from moneys which he had received from George Peckham, for his—W. H. Peckham's—quarter interest in the Marlborough Addition. W. H. Peckham had $5,582.90 of the money he received from George Peckham on March 9, to discharge his liability to the bank. And the
1790 money thus paid by G. W. Peckham was obtained from the $17,623.70 which he secured from the royalty company on March 6, 1926. That $17,623.70 transferred from the Royalty Company to G. W. Peckham was made up of $5,965.76 which the royalty company acquired in that loan of $25,000.00 from the City National

Bank and the remaining $11,657.94 was paid by the Wichita Royalty Company out of funds on deposit prior to the time they got the loan from the City National Bank. On that same date G. W. Peckham issued the royalty company's check for $6,000.00, which he deposited in the Security National Bank—I don't know whether that was the profit he made in a sale of personal property to his trust or not. I do not know how much expense the Marlborough partners had been out at that time. The Marlborough books reflect the capital investment and the expenses. On March 1, 1926, Peckham had been out $9,047.50, that is, W. H. Peckham jointly, G. W. Peckham had been out half of that amount which was $4,523.75. Occasionally bankers ask applicants for loans what they expect to do with the proceeds.

I would not say Mr. Peckham was a joint maker of this March 1, 1926, $25,000.00 loan, because he signed on the face of the note, because I have signed on the face of other men's notes when I was a guarantor, however, it is correct that Mr. Peckham signed on the face of the note.

My investigation has disclosed that Mr. Peckham executed a deed to a half interest on the Marl-
1791 borough Addition, no revenue stamps on it, the deed not being recorded, and does not appear to have ever been recorded.

Tracing the funds with reference to their application by G. W. Peckham, check No. 478 for $17,623.70; 485 for $7,500.00; 503 for $3,000.00; 507 for $1,500.00; 510 for $4,500.00; 519 for $1,000.00; 525 for $4,000.00; 532 for $4,357.58; 516-a for $538.16; 571 for $2,000.00, and 579 for $2,500.00, which makes a total of $58,019.44, I recognize those checks as being those deposited to the account of G. W. Peckham with the plaintiff bank and concerning which the trust books show them to have been in payment of Marlborough items. The $17,623.70 represents a payment from the royalty company to G. W. Peckham for the property called the Marlborough Addition. That money was paid to G. W. Peckham for his interest, and therefore did not go into the Marlborough books. The $17,623.70 has

no place in the Marlborough assets, it was never intended it should have any place in those assets as reflected on the Marlborough books. I have testified that G. W. Peckham accounted for certain of those items by making certain payments to the Marlborough Addition, that is, generally. I can trace these funds to their application, to the purpose expressed in the voucher, which supports the checks, issued by the Wichita Royalty Company to G. W. Peckham, which checks he deposited in his personal account and the first item you asked me about was check No. 478. G. W. Peckham got certain moneys which the records of the Royalty Company show to have been for
1792 payment of the purchase price or the improvement of the Marlborough Addition, and G. W. Peckham personally paid thereafter certain amounts of money and that is the limit of my intent to testify as to the tracing of these funds—these Marlborough funds. The minimum balance rule which I made application of was used to see, or to determine how much, if any, of these alleged trust funds were paid to the bank on Mr. Peckham's obligation to the bank, but it was not applied to see if he used personal funds to make these payments to the Marlborough Addition for the benefit of the Wichita Royalty Company. I did not try to trace through his account identical moneys, into the Marlborough Addition. He would get Marlborough money and draw checks on his account, which would run his balance down below the amount which he had received from the Royalty Company, as a payment for their portion of the Marlborough Expense—that is true. If I am not mistaken, my report did not report, nor was anything said about them, purporting to apply the minimum balance rule against his payments to Marlborough Addition. As far as the Marlborough Addition was concerned I attempted to determine whether or not Peckham had paid over to the Marlborough Addition an amount equal to that which he had received from the Wichita Royalty Company for that purpose. I found that he had not in two instances. Of the $9,595.74 made in the fall of 1926, he got all of that

except $2,226.40, from the $10,000.00 which he received from the royalty company for the Gray and Wheeler
County royalties which he sold to Wichita Roy-
1793 alty Company. I do not know that he sold the
Royalty Company that day to pay the notes of the Marlborough Addition, but he sold the royalty company some properties, being the Wheeler and Gray County properties on October 14, 1926, and he kept about $7,500.00 of that money and used it to pay that note.

Page 1497, Plaintiff Exhibit 212a covers property No. 71 Grimshaw property. G. W. Peckham got title to a quarter of the minerals on February 12, 1923, from Mr. Grimshaw, the deed shows a consideration of $8,000.00, then on March 1933, G. W. Peckham as an individual executed an escrow contract with himself as trustee to sell three-fourths of that interest. Defendant's Exhibit 37 is a deed from Peckham to F. O. Harrell, Defendant's Exhibit 36 is a deed from Peckham to the Royalty Company. These two instruments do not convey equally to those grantees, this quarter interest which Peckham got from Grimshaw; they convey to F. O. Harrell, trustee for the Perpetual Royalty Company, three sixteenth interest in and to all of the oil in that tract and to the Wichita Royalty Company they convey an undivided one-sixteenth interest in and to all of the oil and gas in that tract, and Mr. Peckham acquired an undivided 4/16th interest in the original purchase. The Wichita Royalty Company paid Mr. Peckham $7,500.00 for its interest. F. O. Harrell paid $2,500.00, that is, the Perpetual Oil Company did, F. O. Harrell as trustee. I cannot tell you how much profit Mr. Peckham made, because the first payment which the
Wichita Royalty Company made of $2,500.00,
1794 being the cash down payment, B. L. Fain got that.
It is my opinion that B. L. Fain and G. W. Peckham were jointly interested in the Grimshaw property, the record title was in the name of G. W. Peckham, who made the conveyance. This escrow contract was filed for record May 18, 1923, in Young County, Texas. The Wichita Royalty Company did not pay its trustee $7,-

500.00. The Wichita Royalty Company paid $2,500.00 to B. L. Fain and paid two notes, $2,500.00, which represented a deferred payment in the purchase price of property No. 71, upon which they paid $16.67 interest in one case and $33.33 interest in another. Among those checks which were introduced in evidence, were some checks from G. W. Peckham to the Wichita Royalty Company covering oil runs from the Grimshaw Royalty for the months of March and April, 1923, therefore, this property was producing when George Peckham sold it to the Wichita Royalty. As to the transfer of $3,516.67, the money Peckham got from his property which he sold to the Royalty Company, conveyed to that company, there was none of that amount to the first payment of $2,516.67 that has applied to pay his debts at the bank. The next payment to the bank, on May 15, 1923, when he paid the bank $1,008.55 on his personal indebtedness and none of the Grimshaw purchase price was used by Peckham in payment of any portion of that amount to the bank. Mr. Peckham's balance at the close of business May 1, 1923, was $1,488.94, on May 11, he deposited $500.00, and one check for $41.60, and a check drawn against his
1795 account, there was left in the account $2,533.33 and $1,309.84. The deposit on May 11, of $500.00, was in cash.

With reference to the Luke Wilson, property No. 75, on February 2, 1924, G. W. Peckham received $12,000.00 from B. L. Fain on the trust company s books as the trust company's books will show, check No. 154, was issued to B. L. Fain for some Oklahoma properties, and deposited in the account of G. W. Peckham written in his own hand. I do not know the indorsement of B. L. Fain, but I will say that G. W. Peckham did not write B. L. Fain's name on there, the testimony shows that Mr. Scannell wrote it. Mr. Peckham got the proceeds of that deposited to his personal account. On March 18, check dated the 17th, he received $9,250.00, and between those two dates, those two checks, he received from L. F. Wilson a conveyance to 1 8th royalty, Lots 13 and 14, Block 27, American Tribune

New Colony Subdivision of Archer County, Texas, for which on March 7, he paid Wilson $20,000.00 and on March 18, he paid $80,000.00; I did not check Mr. Wilson's personal account, but the checks indicate that Mr. Wilson got credit for it on a deposit. Mr. Peckham's account was not sufficient on March 6 to clear that check, that is, to pay it. There is a notation on the $20,000.00 check which indicates that there was not sufficient funds on deposit with which to pay that check. On March 6, W. H. Peckham borrowed $10,000.00 from the bank, and on March 6,

1796

G. W. Peckham borrowed $10,000.00 from the bank, the proceeds of these two notes were deposited to George Peckham's personal account, and I don't know whether the $10,000.00 which W. H. Peckham borrowed was deposited to his account, and the check given to George or not, but I know that two $10,000.00 item out of there went into George Peckham's personal account. On April 22, 1925, G. W. Peckham conveyed to his trust one-eighth of the interest he acquired from Wilson. He charged his company $21,250.00 in cash and $6,250.00 as the assumption of an outstanding $50,000.00 oil payment. At different times, and in varying interests, G. W. Peckham sold and conveyed to other parties a portion of this Wilson Royalty—he sold to Dr. Massie an interest for $75,000.00 cash and Dr. Massie assumed $25,000.00 oil payments; the United Royalty Company for cash, $27,000.00, including the cash and oil. Here is a contract between G. W. Peckham and the United. He sold them three 32nd of 1/8th. He sold the King Royalty Company an interest for $8,500.00, and $1,562.50 in oil. He sold R. A. King an interest for $20,000.00 including cash and oil, so I have $8,500.00, including cash in oil and that is the total consideration. He sold to the King Royalty Company 1/32nd of 1/8th for $8,500.00 in cash and in oil and here is the original contract of sale between Peckham and the King Royalty Company. When George Peckham bought this and paid $100,000.00 in cash he agreed to pay $50,000.00 out of the oil. The sale to the King Royalty Company for $8,500.00 in both a cash and

an oil consideration, the oil obligation runs with the original royalty which he acquired from Mr.
1797 Wilson, and the interest he sold, subject to the obligation. The contract here recites a consideration to be paid King Royalty Company as follows: $1,734.38 cash in hand paid, $1,734.37 due on or before May 7, 1924, $1,734.38 due on or before June 7, 1924, and the same amount due on or before July 7, 1924, the consideration was $7,937.50. Then on the next page, "In addition to the payments above, set forth the further sum of $1,562.50 shall be paid out of the other half of the oil and the proceeds of the sale of the oil herein assigned," which makes $9,500.00, which the King Royalty Company paid for that property, instead of $8,500.00—I was in error $1,000.00. However, this is just a contract of sale, I will have to look at the deed before I can tell. On the face of it, it would seem to be $9,500.00 in cash payable to Peckham. That same correction is applicable to the $25,000.00 item we talked about a minute ago, the United Royalty Company, it says that by the assumption of an oil debt. I do not have the contract to the Tolowa. He sold some of it to Mr. Fain's company, but I do not have the contracts and I do not know the terms on which it was sold. That shows he made quite a large profit in that transaction, I have not figured it. The amount of oil receipts by the Wichita Royalty Company from this property is $19,226.04, in cash, and the property was sold during the lifetime of Mr. Peckham for $6,000.00, with the commission paid and I am unable to find where Mr. Peckham accounted for the proceeds of that sale to his company.

1798 The J. H. White property is shown on page . . . Plaintiff's Exhibit 212a. On the day when the $11,000.00 check was charged against the Royalty Company's deposit account on that same day Mr. Peckham made a deposit in his own account of $11,000.00, plus other items which made up a total deposit of $11,321.82, but this was not a direct transfer from the royalty company to his account with the Plaintiff bank. I have not been able to determine where this $11,000.00 came from,

except that I eliminated the possibility of it being a direct deposit or a direct transfer of funds from the Wichita Royalty Company's account, to Peckham's account; I could not say that I have eliminated all probability or possibility of sources of that $11,000.00, other than his having gotten this check payable to the Security National Bank, because he deposited large sums of money, only ten days before that, he deposited an item of $10,000.00, and that did not come from the Wichita Royalty Company. The next payment on this property was on July 24, $10,000.00, he deposited $10,000.00 in his account on July 25, 1924, and the royalty company's check was paid on July 26, 1924. There is no instrument on record showing the title to this property in the Wichita Royalty Company. I have not been able to find any trace of any piece of property that has George Peckham's name on it or anybody else's, saying above the signature that they held that property in trust for the Wichita Royalty Company. We are in agreement as to the oil runs from that property, I don't remember the exact amount, but Mr. Scannell
1799 and I checked them up. The records reveal that in his lifetime he sold this property, or it was sold, and the Wichita Royalty Company received as the proceeds from the sale $1,796.86, plus $536.04; the sale was evidenced by a deed executed by Murchison and Fain, Robertson, Staley, Ross, and others. Mr. Peckham's name did not appear on any of these instruments dealing with what is known as the White lands.

Curtis Lane, property No. 78, Wichita Royalty Company, they have a deed in their files from F. O. Harrell, Wichita Royalty Company paid G. W. Peckham for it, $695.00, I don't know the amount G. W. Peckham paid F. O. Harrell.

Property No. 79, Routan, I went over that this morning, and I came to the conclusion that the $2,500.00 which I had theretofore thought had paid for the royalty, conveyed from Ray and Massie to Wichita Royalty Company was in fact a payment of his one-half interest in the leasehold estate rather than the royalty and his expenses in connection with the drilling of the well.

I will say that with the exception of four or five or possibly six properties all of the Wichita Royalty Company's properties were held in their name, eliminating nine properties which came from Gray and Wheeler counties, which G. W. Peckham conveyed to the Wichita Royalty Company, only about four came from him. The money was paid to Mr. Peckham, then the properties were conveyed to the Royalty Company.

1800 Property No. 80, is the Anderson tract, trust check No. 385 for $6,000.00; I cannot find where anybody held title to that for the Wichita Royalty Company in so far as Pointevant is concerned. $9,433.75 was paid Murchison and Fain for this Anderson. The interest treated in my schedules and testimony that G. W. Peckham acquired for that $9,493.75 is Plaintiff's Exhibit 178, which is Wichita Royalty Company's property No. 80.

Mr. Rogers:

It is agreed that the notation on Defendant's Exhibit 166, reads, "One-12th interest in deal with Allen Mooers, and Routan lands."

The Witness:

They got one-sixteenth interest in and to all of the oil and gas and other minerals in and under, and that may be produced from the following described land situated in Archer County, Texas, and it describes property No. 80, but not 1/16th of the royalty. I had this royalty deed from Peckhan. to the Wichita Royalty Company and had this check showing that he acquired the identical interest and the same number of acres and the same property which the Wichita Royalty Company bought; I think that George Peckham paid $9,493.75 for the identical interest which he conveyed by Plaintiff's Exhibit 174, to Wichita Royalty Company.

The Porter Ranch is No. 83, and none of the proceeds of checks of Wichita Royalty Company ever went into the original purchase of this land by G. W. Peckham, they were deposited to his account, these checks for $1,200.00

and another for $50.00. On December 21, he had paid
$1,200.00 as part of the down payment on that
1801 property. On December 28, he got $1,250.00 from
the Royalty Company and on January 2, he paid another $50.00, being the balance of his part of the purchase price for the Porter Ranch. I have not seen any instrument acknowledging the holding of this property in trust for the Wichita Royalty Company or conveying it to the Wichita Royalty Company.

Property No. 93, is Ellis County, Oklahoma, dated October 8, 1925. This deed of conveyance from G. W. Peckham to his trust, conveying this property, was not there—one instrument being a sale of oil and gas royalty and another instrument being an assignment of oil and gas was there. The Royalty Company just paid $160.00 for the lease and royalty. I believe that became valueless in George Peckham's lifetime.

The Polk property, October 9, 1926, F. O. Harrell acquired for himself a one-fourth of the royalty in the Polk land. The records do not show that the Wichita Royalty Company got a deed to that land, it shows that voucher notations were made behind checks which Peckham received the proceeds of, describing this property.

Property No. 94, is the Hartley County property, October 7. 1926, that never produced anything that I know of. That was a draft drawn on Mr. Peckham and he took up the draft drawn on himself with Royalty Company's check No. 557, for $1,920.00. That property never did produce
anything that I know of.
1802 The Millner Property No. 97, $1,500.00, or one
half of the consideration for that went to the account of G. W. Peckham, the other half to the account of B. L. Fain. The title came direct from Fain to the Royalty Company, and it had an income of less than $400.00. I don't think that was sold. I don't know what value, if any, it had in 1930.

The Callahan property No. 81, is the one where the draft was paid, attached to the conveyance with apparently the grantee's name in blank, in any event, the grantee's name

was in a different typewriter. I don't remember whether the draft was on G. W. Peckham or not. I think the transmittal letter is here.

The books and records of the Wichita Royalty Company were so kept that some purpose for every check that was written is shown on the books of the company, and whether the method and purpose and relationship, etc., of its uses, renders it an unauthorized account, I do not attempt to say. I know G. W. Peckham was personally interested in many of the transactions which I have investigated; I know that he received a part of the consideration for the sale by a third party to the Wichita Royalty Company, I have in mind the Millner $1,500.00. F. O. Harrell conveyed an interest or two to the Wichita Royalty Company, and it was so handled that I could tell what G. W. Peckham paid F. O. Harrell for it. Ray and Massie made a conveyance and I found out that George Peckham did not pay them the $2,500.00 which I thought he did.

If a stockholder had come down here, he would
1803 have found the books of the Wichita Royalty Company in balance, and would have found written on the books some excuse for the issuance of each check. The examination of those books would have indicated the Royalty Company owned these properties. The books only showed the Wichita Royalty Company's interest in its own property.

Re-Direct Examination.

By Mr. Humphrey:

If a stockholder had come and examined the books and records of the Wichita Royalty Company he could have ascertained that the company owned the Marlborough Addition and could have ascertained the expenditures of the Royalty Company on the Marlborough Addition; and a further examination would have shown from whence the Marlborough Addition properties came. The deed

to the Marlborough addition was on file with the royalty company and the letter of transmittal, and all the checks and vouchers in the possession of that company, showing exactly the expenditures on the addition. The books and records of the City National Bank would have shown to whom the deposits were made representing these vouchers. From the inception of it, there was a check of $17,223.70, and it was shown exactly what it is for. The checks issued by the Wichita Royalty Company in connection with the Marlborough Investment showed exactly what they were for. That is also true with reference to the Stephens Royalty. The deed from Harrell and Peckham was on file with the trustee, and copies of the vouchers were on file, in possession of the
1804 Wichita Royalty Company. The deeds to the properties owned by the Wichita Royalty Company were kept in an envelop and filed in that company's office. Every deed that Peckham gave from 1923 up to the time of his death, to the Wichita Royalty Company, was filed with that company. The Marlborough Addition deed was not recorded. There was no difficulty finding where this money went to the account of Mr. Peckham. The difficulty I had was on account of Mr. Peckham's death and finding what disposition he made of some of the funds. Dr. Massie is also dead, A. B. Duncan is dead.

Practically all of these properties were of a fluctuating nature, even including the Marlborough Addition.

I made an analysis of the Routan royalties on page 1500, Exhibit 212a, and found in my original analysis that Ray and Massie had a conveyance to one-sixteenth royalty interest to the Wichita Royalty Company on May 6, 1925. The deed is dated May 6, the date Mr. Peckham received the check from the Wichita Royalty Company, which the voucher notation showed was for the Routan Royalty, and showed to be an identical interest that Ray and Massie conveyed to the Wichita Royalty Company, and on that day or the day after Mr. Peckham gave Ray and Massie a check for $2,500.00, with the notations, 1/12th interest in Allen Moores Routan deal; so it corresponded in amount

and name of the property and designated that as a payment by Peckham for that interest. I did not have access to Ray and Massie's books. When I made this investigation I did not see those deposit slips, I am not
1805 familiar with the actual facts that had been disclosed, or which we had found out later concerning this royalty, I have not had time to look into it, but I will.

From the time George Peckham took charge of the Wichita Royalty Company affairs up until the time of his death, the records showed that he had acquired numbers of royalties. Substantially all of the royalties or properties that George Peckham acquired were taken in the name of the Wichita Royalty Company. The only ones that I recall that the records do not reveal, to some extent in the name of the company, is property No. 95, the Paulk lands and property No. 96, which is the North Anderson Ranch lands, and the Porter Ranch, which stood in the name of Knight and Hines. The White lands in Fain's name, and the Pointevant twenty acres.

Exclusive of the Wheeler and Gray County properties, involved in this case, the other properties which the Wichita Royalty Company acquired from George Peckham were only three or four—the Hartley County Royalty is one, that was a contemporaneous transaction, purchased through a draft on Peckham, with a deed to Peckham and Peckham used the Royalty Company's money to pay up the draft, and contemporaneously deeded the property to the Royalty Company. Then the Grimshaw property, it produced more than the cost price, and their property No. 80, being the Anderson Ranch property, which also produced more than it cost. The South Anderson Ranch produced more than the purchase
1806 price. The Wilson Royalty, the only other property is the Marlborough Addition. The Wilson with the sale value, produced more than the purchase price. The Marlborough Addition was acquired direct from Peckham. Every one of these deals, the Hartley, the Wilson, the Grimshaw, the South Anderson Ranch,

the Marlborough Addition, the books, reflected that they were acquired from George Peckham, and any stockholder could have ascertained that fact.

In addition to the properties above named, they acquired Property No. 93, Ellis County Royalty, also a lease which cost them $160.00, they acquired that from Mr. Peckham, that is all I recall.

The Millner Oil payment, apparently Mr. Fain was interested in that with Mr. Peckham and the Grimshaw those are the only two I recall wherein it is shown that any associate of Peckham, and where Peckham received a part purchase price, sold royalties of producing properties to the Wichita Royalty Company.

I was also asked with reference to the payment to the bank; the first payment of any sum made by Mr. Peckham to the City National Bank, since he became trustee, was February 6, 1923; the second payment March 5, 1923. Mr. Rogers asked me to explain Mr. Sheppard's analysis with reference to these payments, either of those payments, following the minimum balance rule that I have set out here, and I will say that there was not any transferred funds used in making those payments.

1807 E. E. SCANNELL, recalled for further direct examination by Mr. Rogers, testified as follows:

Mr. Rogers:

Let the record show that opposing counsel, at pages 770 to 802 of the record, and elsewhere in the record, have made inquiry of the witness Scannell on cross examination, for an explanation of certain checks, to which, at several times of the inquiry, the Royalty Company objected because of the immateriality of the inquiry, and of the admission of the bank accountants and auditors, that they form no part of an accounting between the parties. And having no way to have the objection passed upon and the inquiries to the answers and checks being referred to in the evidence, the witness E. E. Scannell is recalled for the purpose of mak-

ing an explanation of the items, but that counsel asks that the former objections be sustained and the testimony be stricken and the testimony now offered withdrawn. But the testimony not to be withdrawn in the event any of the original testimony, of which this is explanatory, is left in the record.

The Witness:

I have heretofore been asked to make an explanation of certain checks and certain items, and I have those grouped, and an explanation of checks shown which have heretofore been asked for. I have checked the books and records and noted down and explanation of each and have prepared a memorandum.

Inquiry was made yesterday as to a great number of checks, and I have a memorandum with refer-
1808 ence to those items. Of the checks inquired about yesterday there was only one item which was not covered by my report, and that is on 12-9-24, check from G. W. Peckham to Wichita Royalty Company, Texhoma, Wilson Storage and it is shown on our ledger from the period May 1, to July 31, 1924, $197.83, and marked Storage. I prepared this statement and it is correct.

Mr. Rogers:

We offer the statement in evidence, Defendant's Exhibit 172.

1809 DEFENDANT'S EXHIBIT 172.

Exhibit Making Explanation of Checks Shown on Pages 770 to 802 of this Record.

Date	To Whom—Explanation	Amount
2-16-23	Wichita Royalty Co. "Oil runs Hattie Vaughan Collected 2-12-23." This check is shown on our ledger under this property as received from George Peckham. Peckham, as Trustee, collected this money and turned it over to the Company	499.82

Date	To Whom—Explanation	Amount
1-13-25	Wichita Royalty Co. "Texhoma 12-16-31 Wilson Royalty paid 1-16-23." Shown on oil run ledger as received for period 12-10-15 under Maer Staniforth lease Wilson Royalty	31.04
1-13-25	Wichita Royalty Co. "Refund on McCrory Wilson Royalty." This much was overpaid by us on $6,250.00 oil debt on Wilson Royalty Co. and Mr. McCrory refunded overpayment. See oil run ledger this date. Mr. Peckham collected and turned this amount over to the Company	52.27
11-28-24	Wichita Royalty Co. "Texhoma runs 11-1 to 11-15, Wilson Royalty." This is shown on ledger as received for period Nov. 1, to Nov. 15	36.03
3- 7-23	Wichita Royalty Co. "Oil runs H. Vaughn collected 3-3-23." Shown on our oil run ledger as received from Hattie Vaughn through George Peckham	259.92
3- 7-23	Wichita Royalty Co. "On contract with Interstate Royalty Co." Cash receipt Memorandum #1858 sale of Comar—See Royalty to Interstate Royalty Co.	500.00
3-17-23	Wichita Royalty Company. "Payment on 20 acre Howland Royalty Co." Cash receipt Memorandum #1856 accounts receivable W. H. Peckham sale Rowland Royalty	500.00
1-16-23	Wichita Royalty Co. "Oil runs Hattie Vaughn. Paid 1-18-23."	855.54
1-13-23	Wichita Royalty Co. "Oil runs paid 1-16-23." Our Cash Receipt Memorandum Nos. 1775, 1777, 1778 and 1781 include runs from Hattie Vaughn	

Date	To Whom—Explanation	Amount
	Royalty. These were written up by Mr. Rogertson and we can not definitely separate the items. This is about time our change in Trustees became effective. On January 15, we show a deposit to oil runs $5,794.79 to Security National Bank, and January 18, $3,661.83	240.84
7-29-27	Wichita Royalty Co. "Knight & Hines Porter Ranch Rent." Cash Receipt Memorandum #208, July 29, 1927, on our ledger under lease rental income, M. L. Porter Ranch	115.81
2- 4-25	"Refund Commission Lane Royalty." Cash Receipt Memorandum #116, credit to Royalties owned #78 February 11, 1925	31.25
2-14-23	Wichita Royalty Co. "Payment on Royalty sold to Harrell." Paid February 15, 1924. See our Cash Receipt Memorandum #1814 on purchase of Ellis Holmes Royalty.....	3,000.00
2- 6-23	Wichita Royalty Co. "Oil runs 4 ac. Hattie Vaughn collected 1-27-23." Shown on our records as received from G. W. Peckham on Hattie Vaughn. on oil run check which he collected for use. Peckham, as Trustee, collected these runs and these checks are the payment of the money he collected	566.37
8-15-23	Wichita Royalty Co. "Oil runs 35 acre Royalty Interest, Eagle Picher." 7-16-23 to 7-31-23. Oil run ledger shows on 67, 70 and 73, we received payment for period July 16 to July 31, 1923	199.92
1-26-24	Wichita Royalty Co. "Paid 2-2-24." On January 19, 1923, the Company	

Date	To Whom—Explanation	Amount
	gave its check #147 for Royalty purchase, and this is return of that $500.00 to Wichita Royalty Company account. See our ledger account under Notes & Contracts Payable (Royalties)	5,000.00
2-26-24	Wichita Royalty Co. "Paid 2-8-24." On Ellis Holmes for September, 1923	14.15
4-15-24	Wichita Royalty Co. "Oil run last half March Texhoma-Staniforth Lease, Archer County." Credited on oil run ledger for last half March...	184.54
5-25-23	Wichita Royalty Co. "Oil run Grimshaw for April run by Humble, paid 2-30-23." Oil run ledger entered this as Runs for month of April, 1923, on Grimshaw, as received from G. W. Peckham	302.98
5-15-23	Wichita Royal Co. "Oil run on Grimshaw on Mar. 12 to March 31, 1923." Oil run ledger shows this as received from Peckham and entered on Grimshaw	234.05
8-14-23	Wichita Royal Co. "Oil run 1-9 to 7-15, 1923, on 1/64 Eagle Picher sold by Fain to Wichita Royalty Co." On oil run ledger under property, 67, 70, and 73, is part of deposit 19,512.14 dated August 14, 1923	1,309.47
8-14-23	Wichita Royalty Co. "Oil run 12-7-22 to 7-15-23, on 1/32 Ellis Holmes sold by W. W. Peckham to Wichita Royalty Co." Oil run ledger shows this item credited on Ellis Holmes as collected by Peckham, part of deposit of $19,512.14, dated August 14, 1923, our Cash Receipt Memorandum #19	5,736.16

Date	To Whom—Explanation	Amount
7-23-24	Wichita Royalty Co. "Texhoma runs for last half June, Wilson Royalty." Shown on ledger as received for last half of June	40.04
7-31-24	Wichita Royalty Co. "Texhoma first half July Wilson Royalty." Shown on ledger as received for period July 1, to July 15, 1924	35.78
4- 9-24	Wichita Royalty Co. "Oil run Texhoma-Staniforth first half March." Credited on our oil run ledger to this Royalty	141.38
4- 9-24	Wichita Royalty Co. "Oil run Panhandle R. M. F. first half March." Credited on oil run ledger as received March 1 to March 15, from Peckham as Trustee. Merely collected these checks for the Company and turned them over to it	525.07
9- 5-24	Wichita Royalty Co. "Panhandle runs for May and first three days in June, Wilson Royalty." This is shown on oil run ledger as received from G. W. Peckham for period May and 3 days of June	751.41
9- 3-24	Wichita Royalty Co. "Texhoma-Staniforth last half of July." This is shown on ledger as received for last half of July	34.75
6-28-24	Wichita Royalty Co. "First half of June, Texahoma-Staniforth." Shown on ledger as received from George Peckham for June 1 to June 15. Geo. Peckham, as Trustee, collected these runs due us	55.64
7- 5-24	Wichita Royalty Co. "Griswold runs March and April R M F Lease." Credited as received from Griswold March 16 to April 30 on oil ledger	135.42

Date	To Whom—Explanation	Amount
12-30-24	Wichita Royalty Co. "Texhoma Wilson Royalty December 1 to December 15." Shown on oil run ledger as received for period Dec. 1 to Dec. 15, Peckham, as Trustee, collected these run checks and turned them over to us	34.66
12-13-24	Wichita Royalty Co. "Texhoma last half November Wilson Royalty." Shown on ledger for last half of November	33.23
11-12-24	Wichita Royalty Co. "Texhoma Wilson Royalty, Oct. 16 to Oct. 31." Shown on ledger for last half of October	47.08
10-28-24	Wichita Royalty Company. "Texhoma Wilson Royalty Oct. 1 to October 15." Shown on ledger for period Oct. 1 to Oct. 15. These checks collected by Peckham as Trustee, and turned over to the company	39.05
6-12-24	Wichita Royalty Co. "Texhoma Wilson Royalty, last half of May." Credited on oil run ledger for last half of May	74.63
11- 6-25	Wichita Royalty Co. On October 8th, Company gave its check #427 for $1500. On November 10, our cash receipt memorandum #148. This money is returned to Company account	1,500.00
5- 2-24	Wichita Royalty Co. "Panhandle first half of April, R. M. F. Lease." Shown on oil run ledger as received for first half of April. These checks belonged to Wichita Royalty Company and were collected by George Peckham as Trustee	480.04

Date	To Whom—Explanation	Amount
4-24-24	Wichita Royalty Co. "Panhandle R. M. F. last half March." Shown on oil run ledger as received for last half of March	375.55
4-29-24	Wichita Royalty Co. "Texhoma-Wilson, first half of April." Credited oil run ledger for first half of April	206.58
5-13-24	Wichita Royalty Co. "Texhoma-Wilson, last half of April." Credited on oil run ledger for last half of April	182.44
5-28-24	Wichita Royalty Co. "Texhoma-Staniforth, First half of May." Credited on oil run ledger for first half of May	138.75
5-26-24	Wichita Royalty Co "Panhandle R. M. F. Lease, last half of April." Shown on oil run ledger for last half of April	538.30
10-16-24	Wichita Royalty Co. "Texhoma Wilson, last half of August." Shown on ledger for period August 16 to August 31	54.37
9- 3-24	Wichita Royalty Co. "Texhoma runs Staniforth first half August." Shown on ledger for period of August 1 to August 15	52.83
12- 9-24	Wichita Royalty Co. "Texhoma Wilson storage shown on Ledger for period May 1 to July 31 '24	197.83
10-16-24	Wichita Royalty Co. "Texhoma Wilson, Sept. 1 to Sept. 15." Shown on ledger for period Sept 1 to Sept 15	47.36
10-16-24	Wichita Royalty Co. "Texhoma Wilson, Sept. 15, to Sept. 30." Shown on ledger for period Sept. 16 to Sept. 30	45.00

Date	To Whom—Explanation	Amount
Duplication		
3-17-23	Wichita Royalty Co. "Payment on 20 acres on Rowland Royalty." Probably duplication of check same date above testified to	500.00
Duplication		
3- 7-23	Wichita Royalty Co. "On contract with Interstate Royalty Co. on See Royalty," duplication on Cash Receipt Memorandum #1858 testified above. Probably should refer our Cash Receipt Memorandum #1897 for $500, payment on Comar-See Farm	500.00
1-30-26	Wichita Royalty Co. "Runs first ½ January Stephens Royalty." $522.03 and $713.96 make up this item on oil run ledger and shown as received from G. W. Peckham	1,235.99
7-26-26	Wichita Royalty Co. "Rental on Porter Ranch." Cash Receipt Memorandum #171, dated July 27, 1926, our ledger account under Lease Rental income M. L. Porter Ranch.....	111.67
2-18-26	Wichita Royalty Co. "Runs last half of January Stephens Royalty." $403.39 and $699.74 make up this item on oil ledger and show received from G. W. Peckham	1,103.13
6-29-23	"City National Bank draft for Wichita Royalty Co. on Harrell Payment Ellis Holmes." Cash Receipt Memorandum #2, June 29, states payment from F. O. Harrell on Ellis Holmes with interest $26.67	1,026.67
8-14-23	Wichita Royalty Co. "Oil runs Jan. 9 to July 15, 1923, on 1/64 Eagle Picher sold by W. H. Peckham to Wichita	

Date	To Whom—Explanation	Amount
	Royalty Co." Shown on oil run ledger property 67, 70, 73. This item and one previously mentioned, along with 2,356.74 shown next, are all together on our oil run ledger, deposited in City National Bank, as part of 19,-512.14, August 14, 1923. Cash receipt Memo #18	1,309.47
8-14-23	Wichita Royalty Co. "Oil run Jan. 9 to July 15, 1923, on 9/320 Eagle Picher, sold by Fain to Wichita Royalty Co. and deposited in City Nat'l Bank as part of deposit of 19,512.14 of August 14, 1923	2,356.74
8-14-23	"City National Bank draft to Wichita Royalty Co. Cash Receipt Memorandum #17, account receivable B. L. Fain, dated August 14, for $8,500.00 and Interest $300.30, part of deposit in City Nat'l Bank of August 14, 1923, in the amount of $19,512.14	8,800.30
7-25-23	"City National Bank draft to G. W. Peckham, cashed by Wichita Royalty Co. 7-26-23." Cash receipt Memo #12, accounts receivable F. O. Harrell $1,000.00, interest $33.33, on his purchase of Ellis Holmes Royalty...	1,033.33

The Witness:

The next is a group of checks totaling $15,933.81, being checks No. 46, Wichita Royalty Company, 47, 48 and 49. Those four checks make up George Peckham's deposit on August 14, 1923, to his personal account. They asked me to get them and find out where it was in the record, and that is where it is. No. 46, the amount of it is $9,219.51, the check is made to W. H. Peckham and it is indorsed by W. H. Peckham, under it G. W. Peckham and seems to be in the same handwriting. Check No. 47 is in the amount

$1,560.00 issued by B. L. Fain and it is indorsed by B. L. Fain and under it G. W. Peckham. And that seems to be in the same handwriting, the genuine signature of B. L. Fain. The next is check No. 48, in the amount of $1,033.33, is made to W. H. Peckham and is indorsed W. H. Peckham and under it G. W. Peckham, both of those instruments in the handwriting of G. W. Peckham. The next is No. 49, for $4,120.97, issued to B. L. Fain and it is indorsed by B. L. Fain and under it G. W. Peckham and it is G. W. Peckham's handwriting, and is the genuine signature of B. L. Fain.

The next group of checks involved the amount of money that I received from the Wichita Royalty
1819 Company since my trusteeship, I have a schedule of my receipts for the account of salary, I received $11,790.12 or an average for the seven years and three months from November 1, 1929, to February 1, 1937, of $135.52 per month. During Mr. Peckham's trusteeship, he received either $500.00 during the first part or $400.00 during the latter part of his administration.

Mr. Rogers:

We offer the instrument in evidence, Defendant's Exhibit 173.

1820 (Marked "Defendant's Exhibit 173," as follows:)

DEFENDANT'S EXHIBIT 173.

Wichita Royalty Company.

Exhibit—Salary Account—E. E. Scannell.

Date	No. Check	Detail	Amount
11-30-29	861	Bookkeeper for November 1929	$ 200.00
12-31-29	868	Trustee-bookkeeper Dec. 1929	400.00
1-21-30	875	" "	200.00

Date	No. Check	Detail	Amount
1-31-30	883	" "	200.00
2-15-30	889	" "	200.00
2-28-30	892	" "	200.00
3-15-30	896	" "	200.00
3-31-30	897	" "	200.00
4-15-30	903	" "	200.00
4-30-30	905	" "	200.00
5-16-30	909	" "	200.00
5-31-30	912	" "	200.00
6-13-30	918	" "	200.00
6-25-30	922	" "	200.00
7-16-30	931	" "	200.00
7-31-30	936	" "	200.00
8-15-30	939	" " Indorsed H. C. Richardson	200.00
8-30-30	940	" "	200.00
9-18-30	949	Bookkeeper for November 1929	200.00
9-29-30	953	Trustee-bookkeeper Dec. 1929	400.00
10-16-30	958	" "	200.00
11-14-30	963	" "	200.00
12- 1-30	968	" "	200.00
12-15-30	969	" "	200.00
12-30-30	973	" "	200.00
1- 9-31	974	" "	145.00
1-14-31	978	" "	255.00
3-31-31	983	" "	100.00
4- 1-31	986	" "	150.00
4-15-31	992	" "	200.00
4-30-31	994	" "	100.00
5-20-31	999	" "	200.00
6-12-31	1005	" "	140.00
6-15-31	1006	" "	60.00
7- 1-31	1008	" "	200.00
7-31-31	1013	" "	200.00
8-31-31	1016	" "	200.00
10- 1-31	1018	" "	200.00
10- 1-31	1023	" "	200.00
12- 1-31	1026	" "	200.00

Date	No. Check	Detail	Amount
1- 1-32	1027	" "	200.00
2- 2-32	1028	" "	400.00
2-20-34	1042	Trustee Bookkeeper Dec. 1929	150.00
2-20-34	1043	" "	150.00
2-20-34	1044	" "	256.94
6- 6-34	1045	" "	273.56
10-20-34	1046	" "	578.39
		Balance carried forward.....	$9,958.89
(Page 2)		Balance brought forward	$9,958.89
4-30-30	J. E. 7A	Furniture Sold	34.65
5-26-32	J. E. #8	Executive Salary	50.00
5-26-32	J. E. #8	Clerical Salary, Etc.....	550.00
5-31-33	J. E. #5	" " "	1,015.04
4-30-34	J. E. #7	" " "	40.00
9-30-33	J. E. #3	" " "	380.80
12-31-33	J. E. #10	" " "	30.00
6- 1-34	J. E. #2	" " "	108.58
5-31-35	J. E. #14	" " "	250.00

Total collected for period November 1, 1923, to February 1, 1937, *7 years and 3 months* (?) $12,417.96

Credits to Salary Account, not taking into consideration personal moneys expended:

12- 9-33	Check to Wichita Royalty Co. See our Cash receipt Memorandum #2452	$100.00	
11-13-33	Check to Guy Rogers, payment on Legal Expense..	277.84	
6- 1-36	See Cash on Hand account on 6-1-36	250.00	
			627.84
	Balance		$11,790.12
	Average monthly salary paid E. E. Scannell, Trustee, for 7 years and 3 months from Nov. 1, 1929, to February 1, 1937		$135.52

The Witness:

I have made an analysis concerning the cash of the Wichita Royalty Company during my trusteeship from the period January 16, 1931, down to 6-30-36. The figures therein stated are correct, and the amount referred to, the books and records of the company, whereby they may be supported.

Mr. Rogers:

We offer the instrument in evidence, marked "Defendant's Exhibit 174."

DEFENDANT'S EXHIBIT 174.

Wichita Royalty Company—Analysis of Cash on Hand.

1931			
1-16-31	Cash Recepit Memo. #295, Oil Runs	$414.93	
	Cash Disbursement—		
	Von 975 Martin Linen Supply Co.		4.00
	Von 976 Telephone		4.00
	Von 977 Our part office Rent		26.67
	Von 978 Executive Salary (See personal salary acct.)		225.00
	Von 979 Juanita Perry, Steno.		6.00
	Cash Receipt Memo #296, April 2, transferred to Bank account		118.26
1931-32:			
3- 9	Oil Runs	14.89	
3- 9	" "	7.24	
3-14	" "	37.84	
3-15	" "	81.19	

1931-32:				
5- 9	Oil Runs	.....	36.52	
5-12	" "	.....	114.58	
5-20	" "	.....	58.04	
5-26	" "	.....	106.42	
6-14	" "	.....	144.93	
2-25	" "	.....	95.00	
3-14	J. E. #8	Rent		25.00
5-26	J. E. #8	Office Supplies ...		16.75
5-25	J. E. #8	Stenographer		12.00
5-26	J. E. #8	Postage		30.00
5-26	J. E. #8	Executive Salary (See Personal Salary Acct.)		50.00
5-26	J. E. #8	Clerical Salary (See Per. Sal. Acct.)...		550.00
5-31-32	J. E. #14	Forwarded to next year		12.90
1932-33				
6- 1-32	J. E. #1	Transferred from previous yr.	12.90	
6-15-32	J. E. #4	Oil Runs.....	123.19	
6-15-32	J. E. #4	" "	126.91	
6-15-32	J. E. #4	" "	130.38	
6-15-32	J. E. #4	" "	126.11	
6-15-32	J. E. #4	" "	138.90	
6-15-32	J. E. #4	" "	141.15	
6-15-32	J. E. #4	" "	141.73	
6-15-32	J. E. #4	" "	31.05	
6-15-32	J. E. #4	" "	104.41	
6-15-32	J. E. #4	" "	74.05	
6-15-32	J. E. #4	" "	96.61	
6-15-32	J. E. #4	" "	79.45	
6-15-32	J. E. #4	" "	45.62	
Dec. 31	J. E. #3	Kilgore & Rogers		126.91
"	"	" "		126.11
"	"	" "		104.41

1932-33:				
May 31	J. E. #5	E. E. Scannell (See Personal Sal. Acct.)		1,015.04
1933-34				
6-23-33	J. E. #2	Oil Runs	57.42	
7-15-33	" " "	" "	189.15	
9-15-33	" " "	" "	134.23	
12-14-33	" " "	" "	131.41	
9-30-33	J. E. #3	E. E. Scannell (See Personal Salary Account 512.21)		380.80
11-14-33	Cash Receipt Memo. #2452			131.41
1934-35				
6- 1-34	J. E. #3	Oil Run	115.48	
"	" " #3	" "	108.58	
"	" " #3	" "	87.27	
"	" " #4	" "	96.22	
"	" " #5	" "	354.09	
"	" " #7	" "	453.84	
"	" " #9	" "	42.23	
"	" " #10	" "	61.49	
5-31-35	" " #13	" "	18.75	
6- 1-34	J. E. #1	Legal Service..		115.48
"	" " #2	E. E. Scannell (See Personal Salary Account)		
"	" " #6	Kilgore & Rogers		354.09
"	" " #8	" "		203.84
"	" " #11	" "		158.16
"	" " #12	" "		148.25
5-31-35	" " #14	E. E. Scannell (See Personal Salary Account)		250.00
1935-36				
4-10-35	Journal	Oil Run	187.65	
4-24-35	"	" "	53.86	
5-26-35	"	" "	53.31	
5-29-35	"	" "	541.92	

1935-36:			
5-29-35	Journal Oil Run	1,508.71	
5-31-35	" " "	563.47	
5-31-35	Journal Oil Run	10.00	
5-31-35	" E. E. Scannell (See Personal Salary Account)	250.00	
5-31-25	" Oil run.....	26.74	
5-31-36	Cash Receipt Memo #2464		187.65
"	" " " "		53.86
"	" " " #2465		1,508.71
"	Journal forwarded to next year		1,445.44
1936-37			
6- 1-36	Journal from Previous year	53.31	
"	" " " "	541.92	
"	" " " "	563.47	
"	" " " "	10.00	
"	" E. E. Scannell (See Personal Salary Acct.)	175.00	
"	" " " "	75.00	
"	" from Previous Year $1445.44	26.74	
"	" Oil runs, etc.	109.81	
6-30-36	Cash Receipt Memo. #2466 Transferred to Bank ...		26.74
6-30-36	Cash Receipt Memo. #2466 Transferred to Bank ...		10.00
6-30-36	Cash Receipt Memo. #2466 Transferred to Bank ...		53.31
6-30-36	Cash Receipt Memo. #2467 Transferred to Bank ...		175.00
6-30-36	Cash Receipt Memo. #2467 Transferred to Bank ...		563.47
6-30-36	Cash Receipt Memo. #2470 Transferred to Bank ...		541.92
	Cash on hand 2-1-37		184.81
	Grand Total	$9,084.57	
	Grand Total		$9,084.57

1828 The Witness:

The next group of items consists of and has to do with the joint ownership of George Peckham and I, in the block of City lots that we had in block 44a, of Highland Addition, we refer to them as out near the Catholic Cemetery. I was asked to explain on Defendant's Exhibit 73, a check dated August 3, 1925, from G. W. Peckham in the amount of $218.97, the check was marked Lot 16, Block 44a, sold to Copeland. Then there was various other references at different places in the record whereby I was asked about my ownership with George Peckham of lots in Marlborough Addition, and this Exhibit 175 shows the check that I paid out on Block 44a, and what was done with it.

Mr. Rogers:

We offer the instrument in evidence, marked "Defendant's Exhibit 175."

DEFENDANT'S EXHIBIT 175.

The following checks are given in explanation of jointly owned block of city lots in Block 44-A, Highland Addition to City of Wichita Falls, by G. W. Peckham and E. E. Scannell. Abstract submitted shows joint ownership:

D-Ex-73:

8- 3-25 Check from G. W. Peckham $218.97, marked "Lot 16, Block 33A, sold to Copeland." My deposit slip shows received $218.97 on Lot 16, Block 44-A, on the lot sold to Copeland. Mr. Copeland turned in this check to Mr. Peckham instead of me. This check is paying me my part.

Following are list of my checks paid out on this transaction, and are shown herewith:

To:—

1- 2-25	Kemp & Kell. "Forfeit on Lots 9 to 16 inc. Block 44-A, H. L." $4200.00, 1/3 cash, balance 1-2 yrs.	200.00
1- 9-25	Kemp & Kell. "Lots 9-16, Block 44-A. Reference is made to list of checks furnished by Mr. Carson of the City National Bank. On January 12, 1925, I received George Peckham's check for $700, covering his 1/2 interest in above initial payments	1200.00
11- 6-25	G. W. Peckham, indorsed by him cleared 11-6-25 Notation Recording & Filing Deed on Lot 9, Block 44, Highland	3.25
11-28-25	G. W. Peckham, indorsed by G. W. Peckham, cleared 12-3-25 Notation Cash Payment on Lots 9-10-15 Block 44-A, Highland	81.63
11-28-25	King & Junker, indorsed by them, cleared through City National Bank Nov. 30, 1925. Notations "Block 44-A." This was commission paid to King and Junker on sale of some of these lots ...	148.75
12-19-25	G. W. Peckham, indorsed by G. W. Peckham cleared 12-25-24, Notation "Lot 10, Block 44-A"	189.24
12-22-25	G. W. Peckham, indorsed by G. W. Peckham cleared 12-25-25 Notation "Lot 15, Block 44-A, Highland"	189.17
1-30-26	G. W. Peckham indorsed by G. W. Peckham, cleared February 2, 1926, Notation "Taxes on Lots Blk. 44-A, Highland	28.49
4-20-26	F. M. Copeland indorsed by him, cleared 4-30-26, Notation "Delinquent taxes on Lot 16, Block 44-A Highland"	13.65

1-11-26	G. W. Peckham indorsed by G. W. Peckham, cleared Jan. 12, 1926, Notation "Payment and Interest on Lots in Block 44-A, Highland. Pencil Notation "Principal $350.00, interest $56.00" ...	406.00
6-20-26	G. W. Peckham indorsed by G. W. Peckham, cleared 6-26-26, Notation "First Installment on paving on 4 Lots, Ave. L, Block 44-A, Highland, $120.60. Drawing deed Copeland $2.50	123.10
1-21-27	Wichita County Clerk Notation "Recording releases on Block 44-A, Highland	3.00
1-25-27	G. W. Peckham, indorsed G. W. Peckham, cleared Jan. 26, 1927, Notation "Final Payment on Lots in Block 44-A, Highland." Pencil Notation "Principal $350.00, Int. $28.00"	378.00
3-23-27	G. W. Peckham, indorsed by G. W. Peckham cleared 3-24-27. Notation "Taxes 1926 on Block 44-A"	37.02
6-14-27	L. E. Whitam Company, indorsed by L. E. Whitham Co. by W. B. Abbott. Notation "Paving on Avenue L, Lots"	338.28
2-28-28	W. R. Hyer, Tax Collector. Notation on check "Lot 13, 14, Block 44-A, City 18.76, School 14.00"	32.76
6-14-28	L. E. Whitham & Co. Notation "Paving installment on Lot 14, Block 44-A, Highland"	79.74
6-14-28	L. E. Whitham & Co. Notation "Paving installment on Lot 13, Blk. 44-A, Highland"	79.74
6-11-29	L. E. Whitham & Co. Notation "Paving Lot 13, Block 44-A." Pencil Notation "Avenue L. Cert. 22-267 #4 Company & Interest"	74.91
7- 1-29	L. E. Whitham & Co. Notation "Pavement Lot 14, Block 44-A"	74.91
		$3,681.64

The effect of this schedule shows that George Peckham owes me nothing and that I owe him nothing.

1832 The Witness:

The next group inquired about by counsel relates to the receipts from the District Court of Wichita County concerning certain items, turned over by R. L. Sanford, the district clerk, as collected from the pipe line companies, and are; our cash receipt memos, in the first instance, $80.10, check from the Pure Oil Company was check No. 4317, dated July 2, 1936, was deposited to our bank in our C. R. N. No. 2468. Item $85.56, Gulf Refining Company, check No. 16001 drawn on American National Bank of Beaumont, deposited to our bank account in C. R. N. No. 2460. The next item, in the amount of $11.53, Magnolia Refining Company, received R. L. Sanford, District Clerk, October 26, 1936, is included in our deposit of $51.54 on our C. R. N. 2469.

Mr. Boone also asked me at various places in the record, and insinuating that I received $12,000.00 proceeds of royalty check No. 154, that is my explanation and I wrote it myself.

Mr. Rogers:

We offer it in evidence.

(Said instrument marked Exhibit 176, but withdrawn as hereinafter shown.)

DEFENDANT'S EXHIBIT 176.

The Witness:

Mr. Peckham died leaving approximately $100,000.00 in life insurance.

As to Defendant's Exhibit 176, there are probably certain statements which should not be made.

1833 Mr. Rogers:
I withdraw Defendant's Exhibit 176.

The Witness:
Some of the proceeds of transferred funds went to pay the premiums on life insurance policies of Mr. Peckham. I have analyzed the account of Mr. Peckham with the bank in reference to the payment of premiums, by what I understand Mr. Lambert to mean, the minimum balance rule. It shows that premiums on this life insurance were paid out of trust funds on April 26, 1926, and the amount of the premium was $624.40, and again on May 28, 1926, and the amount was $624.40, and again on June 23, 1927, and the amount was $886.60.

Mr. Boone also asked me to show my bank statement for the month of November, 1927, I now have such statement here and tender it to Mr. Boone.

Mr. Boone asked me if I got the $12,000.00 proceeds on trust check No. 154, with the inference that I got it, and I will say that it has been developed at that time the bank had in its possession the deposit slip for that $12,000.00 item, written in the handwriting of G. W. Peckham, whereby G. W. Peckham got credit for $12,000.00, and the testimony of Mr. Lambert so shows.

The next item was a group of checks in Exhibits 51 and 98, which George Peckham had given me, offered by Mr. Boone and this is my explanation of those checks and all of the checks.

Mr. Rogers:
We offer it in evidence, Defendant's Exhibit 177.

(Marked "Defendant's Exhibit 177" as follows:)

1834 DEFENDANT'S EXHIBIT 177.

Exhibit Explaining Checks of G. W. Peckham turned over to E. E. Scannell, and Checks of E. E. Scannell in Explanation Attached.

D-Exhibit #51:

		Peckham Payments to Scannell.	Scannell Payments to Peckham.
6-27-23	George Peckham and I used to hunt and fish together a great deal, and this is *probably* a payment on something of this sort	25.00	

D-Exhibit #52:

8-30-23	I think this check is part of traveling expense to Seattle, Portland, San Francisco and Los Angeles, relative to details and clerical end of the organization of Tolowa Royalties, Inc.	229.40	

D-Exhibit 53:

11-24-23	There was considerable expense attached to the detail work of organizing and getting our connections working on Tolowa	400.00	

Exhibit 54:

12- 8-25	and I believe these checks are a part of the expense on this detail work which I handled. I believe these checks have to do with that expense	350.00	

D-Exhibit #55:

2-20-24	"Bowden Interest sold to Shaw."	651.83	500.00

I am unable to definitely recognize this deal from the information given on Geo. Peckham's check. However, from my tax return I find I had an interest in Maer-Staniforth lease which cost me $500.00. When making up the analysis of George Peckham's personal checks around this date I noticed that:

On February 16, 1924, Geo. Peckham issued his personal check to A. F. Bowden for $2500.00 on which was notation "Part Purchase Price 1/16 interest 20 acres, Lot 14, Block 27 Am Tribune Colony Land, Archer County, Texas." which was the Maer-Staniforth Lease.

February 21, 1924, George Peckham issued his check to I. C. Scales for $500.00 on which was written "Com. on Int. Lot 14, Blk. 27, Archer Co. sold to Shaw."

February 21, 1924, George Peckham gave B. L. Fain his check for $1024.43 on which was written "Bowden Int. sold to Shaw."

February 21, 1924, George Peckham gave his check to W. H. Peckham for $3661.84 on which was written "Bal. Due on Shaw deal" and on the same date his check for $1000.00.

1836 February 23 he issued me his check for $651.83, marked "Bowden Int. to Shaw." So I think this is the Maer-Staniforth lease in which I invested $500.00. George Peckham's tax return and Memorandum Record, in possession of City National Bank, have more information on George Peckham than I, and they are in position to give further information, if material.

In this connection, the records show that George Peckham got Wichita Royalty Company's check #160 for $2500.00 on February 11, 1924, for the option on Maer-Staniforth 20 acres in Archer County, which was E. 1/2 of Lot 14, Blk. 27 American Tribune New Colony lands, and on February 16, 1924, gave his check to A. F. Bowden

for $2500.00 as part of purchase price for 1/16 interest in Lot 14, Blk. 27 Am. Tribune lands. On this same day, February 16, 1924, on our CRM #58 George Peckham returned to WRCo the $2500.00 he got on Wichita Royalty Co. check #160.

On February 21 George Peckham paid I. C. Scales $500.00 as "Commission on interest in Lot 14, Blk. 27 Archer Co., sold to Bert Shaw," showing that the sale price of this interest was at least $10,000.00. Out of the sale price, on February 21, he paid B. L. Fain $1024.43; he paid Bill Peckham $1000.00 and $3661.84 and me $651.83 on February 23. The conclusion naturally follows that he saw a substantial profit in the deal and returned the company money and put up the money himself.

1837

D-Exhibit 56:

2-21-24	"Netherton Lease." I find I had an interest in the Netherton Lease, sold to New Berry. My cost was $30.00, Profit $20.00	50.00	30.00

D-Exhibit #57:

2- 2-24 &	"Tonkawa Deal." I put up my check for $1000.00 and these two items are the profit on my interest in this property	797.50	1000.00

Exhibit 59:

4-15-24	I think this is the interest which went to the National Royalty Company, and was litigated over a long period	270.00	

D-Exhibit #58:

3-19-24 &	This money ($2000.00) is return of investment in the L. F. Wilson Royalty	2000.00	2000.00

Exhibit 60:

Record previous trial, which relates that I borrowed $2000.00 from M. Clifford of the Security National Bank to put into this deal and reported $880.00 profit on my tax return for 1924. Analysis of Peckham's checks shows that March 7, 1924, the initial payment of $20,000.00 was made to L. F. Wilson. In the deposit of $5400.00 on March 10 to Ge. Peckham's account there is an item of $400.00, three $1000.00 items, and one for $2000.00, and I am of the opinion this item is my $2000.00 cashier's check. The evidence disclosed in this trial shows Peckham paid $100,000 cash and $50,000 out of oil for the Wilson Royalty and sold it for $189,000 and $50,000 oil. I had 2% interest and should have received $1780.00 profit on my investment.

D-Exhibit #51:

1-24-25 Probably Social. We used to have a little get-together among friends occasionally 80.00

D-Exhibit #63:

2-16-25 Have requested Perkins-Timberlake to see if this item went on my account, or if I purchased something. I am

of the opinion this was money won and I just paid it on my account with them 50.35

D-Exhibits 62, 64, 65, 66, 67, 68, 69, 70, 71, 72:

2-14-25 to 10-31-25 Tolowa Royalty Inc. Salary checks. George Peckham as President was to receive 10% of the Capital Stock, as sold. His remuneration was to come in stock and he paid my salary in cash. George Peckham was trustee with a declaration of Trust called Mid-Continent Royalty Co., recorded in Vol. 186, pages 625-8, Feb. 27, 1922, Wichita County Records, copy of which is furnished. From this came Tolowa Royalty, Inc., now Wotola Royalty Corporation. I handled all details on these companies until June, 1933, when the bank pressed Fain so hard on his personal obligations it was necessary for me to either drop the Wichita Royalty litigation or resign. 100.00 100.00 100.00 100.00 100.00 100.00 100.00 100.00 100.00 100.00

D-Exhibit #76:

6-15-25 Check made to cash, indorsed by E. E. Scannell, cleared through City National Bank. Probably George Peckham asked me to go down and get this money for him, or maybe a cashier's check. We find in analyzing Peckham's 1000.00

checks many instances where he sent his office girl to cash large checks for him. I would not want to believe that he gave these girls these amounts of money, and I didn't get this. George used to play in some pretty large games and probably needed the cash, and this time he asked me to go get it for him. Had check been mine it would have been made to me as these others were, and said what it was for. George lived three years after this transaction, and if he didn't get the money I know I would not have been working for him.

Mr. Harrell knew George Peckham as intimately as I did. He was Peckham's banker, confidential adviser and partner. I was Peckham's employee and never forgot that fact, which is one reason I have always accounted for our friendship. I kept my place, tended to my own business, and he liked me for that reason.

D-Exhibit:

7- 7-25 To G. W. Peckham, indorsed by G. W. Peckham, cleared 7-7-25. Notation "Int. in Street & Raywell." This is the well drilled on J. Pointevent Survey and was a dry hole 600.00

D-Exhibit:

10-20-25	To G. W. Peckham—indorsed by G. W. Peckham, cleared 10-26-25—Notation "Vernon" The above two checks are for my interest in the cost of a well drilled on the Vernon Royalty, J. Pointevent Survey, page.... this testimony.		260.12

D-Exhibit:

10-28-26	My check to G. W. Peckham, indorsed by him and cleared 10-31-26, in amount of	$1170.00	1170.00
	This shows to be my investment in the Wheeler County deal. On January 25, 1927, I received a check from G. W. Peckham Def. Ex. for $1170.-00 marked "On Wheeler County Royalties," and on November 10, 1926, a check for $600.00 from G. W. Peckham marked "Profit on Wheeler County Royalties" indicating my profit was this amount. Page ..... On pages ..... of this record with reference to purchase and sales of the Wheeler County Royalties, Peckham's record shows "Bought Wheeler County Royalties for $44,800.	600.00	
	"Webb Gray Co.	5,600.00	
	"Sec. 47 Johnson Wheeler Co.	4,000.00	
	"Sec. 54 Noel Wheeler Co.	5,000.00	
	"Sec. 57 Borden (Deed says paid $1000.00)	8,400.00	

"Sec. 43 Hill-Koons	2,000.00
"Sec. 44 Walker	4,000.00
"Sec. 45 Plummer	8,000.00
"Sec. 12 Company	8,000.00
Cost	$45,000.00

On Section 57 Borden, Peckham shows he paid $8400.00 while the deed shows he paid $1000.00 (page ....), therefore, his cost was $7400.00 less than his book shows. Then, too, he sold an interest to C. E. Morrison which would make his receipts in excess of $52,500 by the amount Morrison paid, which, as near as we can figure, was $7500.00, and brings his receipts from sales up to $60,000 before selling to Wichita Roy. Co. to whom his book states "sold balance to Wichita Roy. Co. $10,000 which is exact cost." His sales, according to his record, were

Tolowa	$30,500.00
Joe Art	1,000.00
J. T. Harrell	1,000.00
United	20,000.00
	$52,000.00
Sales not shown on Peckham's record C. E. Morrison	7,500.00
	$60,000.00
Sale to Wichita Royalty Co.	10,000.00
	$70,000.00

My figuring is that he had a gross profit prior to sale to Wichita Roy. Co. of $15,000.00. Deducting my $600.00 profit and Fain's $6500.00 commission from this gross profit left him a net profit of $7900.00 and he still had the Wichita Royalty Co. interest which he sold them for $10,000.00. Peckham admits in his record his "profit was $10,600."

Exhibit:
9-10-27 To G. W. Peckham, indorsed by G. W. Peckham, cleared 9-24-27 ..... 24.60

Exhibit:
11-14-27 To G. W. Peckham—indorsed by G. W. Peckham, cleared 11-17-27 ..... 50.00

Exhibit:
9-27 To G. W. Peckham—indorsed by G. W. Peckham—cleared 9-24-27 ..... 13.20

Exhibit:
10-13-27 G. W. Peckham—indorsed G. W. Peckham—cleared 9-24-27 ..... 35.00

Exhibit:
2-19-25 Check issued to G. W. Peckham, indorsed by G. W. Peckham—cleared 2-19-25 ..... 2.00

Exhibit:
1- 5-29 G. W. Peckham to E. E. Scannell refer to my check Jan. 7, 1929, to R. R. Robertson for $300.00, on which is notation "Wilbarger lease, as per letter 12-22-28" "Dry Hole" The letter is attached from R. R. Robertson. George had half of my interest 150.00 300.00

Exhibit:

9-15-25	W. H. Peckham, indorsement the same—cleared 9-16-25		700.00
		$9704.08	$6684.92

George Peckham does not owe me anything and I do not owe him anything.

Def. Exhibit 140, pages .... Pl. Exhibit 162, page ...., Wichita Roy. Co. check #237 dated July 2, 1924, payable to Security Nat'l Bank, for $11000.00 paid 7-3-24. On July 2, 1924, George Peckham deposited a check for $11000.00 and a check for $321.82 in the City National Bank. Examination of the deposit slip shows that both items were checks, indicating that Peckham got a cashier's check for $11,000.00 at the Security National Bank on July 2, 1924, and brought it back to the City National Bank and deposited it in his account. On the following morning, July 3, 1924, our check #237 reached the City National Bank through the clearing house and was charged to the Wichita Royalty Co. account	$11000.00
Pl. Exhibit 161—page ...., Wichita Roy. Co. check #246 dated July 24, 1924, payable to Security National Bank for $10,000.00, was paid July 26, 1924, by the City National Bank. On July 25, George Peckham deposited a check in the City National Bank for $10,000.00	10000.00

1845 It is evident that Peckham, on July 25th, took the check to the Security National Bank, got a cashier's check, came back to the City National Bank and deposited it to his account. On July 26th the Com-

pany's check reached the City National Bank through the clearing house and was charged to our account and canceled. Because of my friendship for Geo. Peckham I have always soft-pedaled his personal actions, except for spontaneous outbursts when counsel for the bank and Harrell have sought to build a case against me. But since Mr. Boone has, at Mr. Harrell's direction, inferred that I got this money, it is time for a little plain talk on what I know of the history of this J. H. White transaction.

In the beginning R. R. Robertson, B. L. Fain and George Peckham acquired the lease on the White land held by W. R. Ross, carrying Ross for an interest. Then they sold a half interest to Murchison-Fain who agreed to drill it. Several wells were drilled but the lease was not much good, so it was sold to J. H. White, the land owner, (P. E. 165, page ....). In the meantime J. I. Staley had acquired an interest from what Fain had left and George Peckham sold his interest to the Wichita Royalty Company for $21,000.00. A short time previous to the sale by Peckham of his interest to Wichita Royalty Company, which was July 2, 1924, George Peckham lost in excess of $20,000.00 gambling. The following morning
1846 when the game ended George broke down. He asked that a little time be given him to sell some stuff to get the money to pay off. Witnesses are available to substantiate this. Wichita Royalty Company had in excess of $11,000.00 on hand and this amount was paid Peckham for the 46/384 leasehold he owned.

On July 25, 1924, the day after the second check #246 for the amount of $10,000.00 was drawn, Geo. Peckham for the Trust borrowed from the City National Bank $15,000.00 (Page .....) which entitled trust check #246 to be paid on July 26th. Mr. Harrell testified that frequently inquiry was made as to what loans for $15,000.00 and $25,000.00 dollars were to be used for. In following the analysis of Geo. Peckham's check, one notes the payment of this loss subsequent to the date the first trust check was given and in Peckham's checks one check was

shown, on the corner of which was written that it was the last payment on this deal. George Peckham was the only one interested in the White lease that came out with a profit.

The Witness:

Inquiry was also made of me concerning transactions between me and G. W. Peckham, in the purchase of vacant lots in the Marlborough Addition. I have worked out a schedule of my explanation in respect to those transactions, and have a detail of checks supporting the payments that I made. I have the checks and here
1847 and now exhibit them to counsel. And I also have this explanation.

Mr. Rogers:

We offer the instrument in evidence, Defendant's Exhibit 178.

DEFENDANT'S EXHIBIT 178.

Personal checks attached of E. E. Scannell, Given on Marlborough Addition Lots.

Exhibit 74:

3-29-26	To Marlborough Addition—so indorsed —cleared by Security National Bank 4-5-26—Notation "10 Lots in Marlborough Addition."	400.00
3-31-26	To G. W. Peckham, indorsed by G. W. Peckham, cleared by Security National Bank 4-3-26 Notation "Return of half of cash payment on Lots in Marlboro."	200.00
4-28-26	To Marlboro Addition, indorsed "Credit Account of Marlborough Addition."—cleared my account Security National Bank 5-4-26" Notation on check "Payment on 10 lots."	159.00

Exhibit 75—$79.09:

5-28-26 To Marlborough Addition—indorsed Marlborough Addition by G. W. Peckham—paid 6-1-26, my account Security Nat'l Bank 158.17

Exhibit 94—$974.15:

6-15-26 Marlborough Addition—indorsed Marlborough Addition by G. W. Peckham—Cleared my acct. Security National Bank 6-16-26—Notation "Final Payment Lots 1 and 2, Block 7, Marlborough Addition" 974.15

Exhibit 77—$47.19:

6-28-26 Marlborough Addition—indorsed Marlborough Addition by G. W. Peckham—cleared 6-28-26. Notation "Payment on Lots 3, 4, 5, 6, Block 7 and 4, 5, 6, & 7, Block 6, Marlborough Addition. $100.00 Principal, $25.84 Interest 125.84

Exhibit 95—$821.97:

6-29-26 To Marlborough Addition—indorsed Marlborough Addition by G. W. Peckham—cleared 7-2-26—Notation "Paving on lots 1 & 2, Block 7" 821.97

Exhibit 79——$45.95:

7-31-26 To Marlborough Addition—indorsed Marlborough Addition by G. W. Peckham—cleared 8-2-26—Notation "Payment on 8 lots Marlborough Addition—$100 payment $25.20 Interest" 125.20

Exhibit 80—$179.19:

7-31-26 To Marlborough Addition—Indorsed Marlborough Addition by G. W. Peckham, cleared 8-2-26—Notation "Paving 8 lots Marlborough Addition, Peck-

ham 179.19, Scannell $298.65." Showing Scannell at least paying his part in every instance 477.84

9-28-26 To Marlborough Addition—indorsed same, by G. W. Peckham, cleared 10-4-26. Shown on Marlborough Books 155.65

Exhibit 81—$93.40:

9-28-26 Marlborough Addition—indorsed Marlborough Addition by G. W. Peckham—cleared 10-4-26 ..... 93.40

Shown on Marlborough Books.

Exhibit 82—$46.20:

11-10-26 Marlborough Addition—indorsed by Marlborough Addition by G. W. Peckham and paid Nov. 12—Notation "Payment on Lots" 123.20

Exhibit 86—$137.85:

1-25-27 To Marlborough Addition—indorsed by same, by G. W. Peckham—cleared 1-26-27 ..... 357.60

4-14-27 To Marlborough Addition—indorsed "Marlborough Addition E." City National Bank, Wichita Falls (Rubber Stamp)—Paid 4-15-27. Notation "Lots in Marlborough Addition" 354.80

Exhibit 92—$200.00:

10- 3-27 To Marlborough Addition—indorsed Marlborough Addition in G. W. Peckham's handwriting—cleared 10-4-27 .. 200.00

Exhibit 90—$147.24:

10- 1-27 To Marlborough Addition—indorsed by same in G. W. Peckham's handwriting. Cleared 10-4-27. Notation "3 Payments on 8 Lots in Marlborough, and interest to date" 392.64

3-21-28 To Marlborough Addition—indorsed Marlborough Addition in G. W. Peckham's handwriting—cleared 3-22-28—Notation "Payment in full, Lot 4, north half 5 Block 7, Marlborough Addition." Int. 78.22 ..... 978.22

Exhibit 93—$403.63:

3-21-28 Marlborough Addition—indorsed Marlborough Addition in handwriting of G. W. Peckham. Cleared 3-22-28—Notation "Payments on Lots in Marlborough. Principal 406.25, Interest 61.75, paving 388.24, interest on paving 155.29. Tax 133.83, Principal paid $125.00 ..... 1020.36

8- 6-28 To Marlborough Addition—indorsed Marlborough Addition by L. L. Sellers, cleared 8-14-28. Notation "Abstract Lot 7, Block 6" 3.00

7- 8-29 To Marlborough Addition—indorsed Marlborough Addition by L. L. Sellers—cleared 4-13-29. Notation "Payments on lots in Marlborough Addn." 500.00

1- 9-30 To Texas Investment Company—indorsed by same, by L. L. Sellers—cleared 1-13-30. "Interest" 60.47

7-29-30 To Texas Investment Co. Draft on S. N. B. W. F. Cleared 7-30-30. Notation "1929 Taxes Marlborough Lots" .. 62.76

Total checks offered in exhibits by City Nat'l Bank as payments made by G. W. Peckham to E. E. Scannell on Marlborough Group 3746.00

Total canceled checks offered by E. E. Scannell pertaining to Marlborough Payments, paid either to Marlborough or G. W. Peckham 7754.27

Total payments made by E. E. Scannell to Marlborough Addition, as reflected by Marlborough Books, kept by J. T. Harrell in the City Nat'l Bank, in their possession and available for their reference at all times for checking this account $190.04

Canceled checks produced by E. E. Scannell, not reflected by Marlborough Books, itemized:

3-31-26 G. W. Peckham—"Return of half first payment on lots in Marlborough" 200.00

8- 6-28 Marlborough Addition—"Abstract lot 7, Blk. 6" 3.00

7- 8-29 Marlborough Addition—indorsed Marlborough Addition by L. L. Sellers—Cleared 4-13-29 Notation "Payments on lots in Marlborough" 500.00

Payments credited on Marlborough Books as made by E. E. Scannell, for which checks were not furnished by Scannell:

1-28-28 Payment by E. E. Scannell 125.00

12- 5-28 Payment by E. E. Scannell, Scannell-Totzke Abst. 3.50

7-20-29 Payment by E. E. Scannell 1009.87

Summary:

Total checks of G. W. Peckham—that explanation is asked for per list furnished by City National Bank, Exhibits #51 to 98, inclusive (Refer to Page .... this record) $35,318.10

Total canceled checks furnished by E. E. Scannell in explanation exhibits 51 to 98, refer to pages .... to .... this record $38,081.38

The effect of this schedule is that George Peckham owes me nothing and I owe him nothing.

The Witness:

I was likewise asked concerning payments received by me from G. W. Peckham in the construction of his house in the Marlborough Addition; I have analyzed that and have the canceled checks whereby I paid for
1853 the building of that house in the amount shown by this exhibit.

Mr. Rogers:

We offer the exhibit in evidence.

DEFENDANT'S EXHIBIT 179.

Exhibit Tracing Payments of G. W. Peckham's House at 3200 Peckham. Checks issued by E. E. Scannell as follows:

D-Exhibit #78:

7-26-26 To W. H. Allen "Advance on house" indorsed by W. H. Allen and Sorey & Vohlberg, signed by E. E. Scannell .. $490.00

Exhibit #83:

8-31-26 To credit of G. W. Peckham. No indorsements. On August 30 I deposited George Peckham's check for $8100.00 along with his salary check #529 for $400.00, indorsed G. W. Peckham by E. E. Scannell, making deposit of $8500.00. See deposit slip and bank statement, page .... of the record discussing this payment, as well as foregoing and subsequent pages. Peckham's check for $8100.00 was not good so I deposited $4250.00 of the $8100.00

	back to his account. Deposit shows initial of C. E. Basham. Check canceled 8-31-26 and charged to my account. My bank statements of my account with the City National Bank are submitted herewith. There is no shortage whatever	4250.00
9- 3-26	To W. H. Allen, indorsed by W. H. Allen and canceled Sept. 7, 1926. Check marked "Payment on house in Marlborough, per order T. L. Sorey"	4250.00
Exhibit 84:		
10-18-26	To W. H. Allen, indorsed by W. H. Allen and "To apply on contract house in Marlborough." Canceled Oct. 19, 1926. See bank statement	4250.00
Exhibit 96:		
11-10-26	To W. H. Allen, indorsed by W. H. Allen, canceled Nov. 15, 1926, marked "Payment on house in Marlborough" ..	2500.00
Exhibit 97:		
11-24-26	To W. H. Allen, indorsed by W. H. Allen, canceled Nov. 26, "Payment on house in Marlborough"	1750.00
Exhibit 85:		
12- 9-26	To Geo. F. Preston, indorsed by Geo. F. Preston, canceled 12-13-26, marked "Per contract on landscape work on Marlborough home"	447.65
1-17-27	To W. H. Allen, indorsed by W. H. Allen, paid 1-18-27, marked "Payment on house in Marlborough"	1500.00

Exhibit 87:

2- 7-27 To Geo. F. Preston, indorsed by Geo. F. Preston, canceled 2-8-27, notation "Payment in full for landscape work" 175.00

Exhibit 98:

2-19-27 To Sorey & Volberg, and so indorsed, canceled 2-29-27, "Balance due on Architect Fees on home in Marlboro" drawn on my Security National Bank account 210.00

2-19-27 To W. H. Allen, indorsed by W. H. Allen and Long-Bell Lumber Co.—City National Bank stamp canceled 2-25-27, Security National Bank account. This check and the one mentioned just above (410.00) make up Peckham's check for $4370.40, which I received from him and deposited in my account Feb. 20, 1927. This is the amount Mr. Boone claims was short, which he discusses in connection with Exhibit 109. There is no shortage 4150.40

Total checks handled through my account shown above on Geo. Peckham's home $23,983.05

Exhibit 88:

2-12-27 To Geo. F. Preston, indorsed Geo. F. Preston, cleared through Security National Bank 2-12-27 Notation "Payment on tree planting in Marlborough." Geo. P. Paid $27.00, C. C. Parfet $54.00, H. C. Richardsin paid a little and I think DeMontel a small amount. Marlborough addition paid nothing, but received benefit from money we spent in improving our property $207.50

Total of Geo. Peckham's checks inquired about on Marlborough house, per exhibits $22,110.05

Total payments made by E. E. Scannell on Marlborough house transaction including the item of $207.50 on trees ...$24,190.55

The effect of this schedule is that George Peckham owes me nothing and I do not owe him anything.

Have paid out more than you asked about, Mr. Boone, but know accounts balance.

The Witness:

I have prepared an analysis of dividends paid by Wichita Royalty Company to the stockholders, showing the dates of the payment and the percent of payments. Those paid by George Peckham and those paid previous to the time he came in, I found during the time George Peckham was trustee he paid a total of ninetee.. percent out of a total of one hundred and thirteen percent, providing you give him credit for the dividend paid on January 15, 1923, and all stock of record December 31, 1922, and which was, of course, declared by the former trustee.

Defendant's Exhibit 109 is a deed from me to Peckham, my explanation is—the deed from Scannell and wife to George Peckham for $13,500.00 cash and $12,000.00 in notes; the deed is dated February 23, 1927. The
1857 notes went to the Empire Mortgage Company on April 20, 1927, and on April 23, 1927, George Peckham deposited $12,000.00 in his personal account, which is probably the money on the note. The deed shows that George Peckham was borrowing at least fifty percent of the cost on his house.

Suggestion was also made in the record as to the lack of correspondence betwen the trust records and the bank records with respect to cash; it is evident that an effort was made to reconcile our books with the deposit account of the bank. Our bank statement from the City National Bank shows our deposit balance on December 31 was $1,-

902.30, and our books showed on that date, $950.80, showing there was $951.42 in checks outstanding that had not reached the bank. Our records showed these checks were Nos. 860, for $400.00; No. 867 for $33.50, and 868 for $400.00, and there was a number of old outstanding dividend checks which amounted to $117.92, which made a total of $951.42 in floating checks. Among the one thousand three hundred stockholders scattered over the United States and foreign countries, it is my testimony that some dividend checks mailed to them in former years had not cleared, but the books and records of the Wichita Royalty Company showed definitely the payees and those checks outstanding, and the amounts.

I was severely cross examined with respect to the Lillybridge matter, with drawing certain moneys from the bank for the reasons therein stated, I have an analysis of the handling of those funds, and I exhibit to opposing counsel the deposit slips to the credit of Wichita
1858 Royalty Company corresponding with the collector of Internal Revenue receipts, a letter from the collector, a copy of the letter to him, and an adjustment of the controversy existing at that time between the Wichita Royalty Company and the collector's department. I was carrying on the negotiations for the royalty company under the direction of Mr. Peckham. This is an analysis of the receipt of those funds and the disbursement of them, it refers to the cash memos, and the books and records of the Wichita Royalty Company support this analysis, which is now offered in evidence.

Mr. Rogers:

Instrument marked "Defendant's Exhibit 180."

DEFENDANT'S EXHIBIT 180.

(Exhibited to opposing counsel in support of former testimony).

In regard to the Lillibridge Matters—Pages .... to ....

Our correspondence file is attached.

Exhibit 103 and 104. Referring to our Ledger 1926—E. E. Scannell—salary advances.

	Debit	
1-16-26	See check No. 462	$1200.00
1-18-26	See Check No. 463	300.00
1-19-26	See Check No. 464	400.00
1-21-26	Cash Memo. No. 155	3287.22
	Credit	5187.22
	Credit	
	2-2-26 See Cash Memo. No. 157	700.00
1859	2-10-26 See Cash Memo. No. 158	1200.00
	2-10-26 See Cash Memo	3287.22
		5187.22

Reference is made to the two deposit slips attached, which show when and how this money was returned to the Banks.

2-2-26	Deposited in Security National Bank. Deposit Slip reads "E. E. Scannell $300.00" and "E. E. Scannell $400.00."	700.00
2-10-26	Deposited City National Bank: "Transfer Fee $2.25," "E. E. Scannell $1200.00," "E. E Scannell, Treasurer, $3287.22," and "Oil Runs $2593.93."	7083.40

The Witness:

I was asked in regard to paying Cleo Bowers for making some records, which was for copying G. W. Peckham's check. She also took the deposition of E. A. Deaton, she is a Court reporter in the 78th District Court, this is what she charged and this is what I paid.

Mr. Rogers:

We offer it in evidence, Defendant's Exhibit 181.

1860 DEFENDANT'S EXHIBIT 181.

Wichita Royalty Company, Wichita Falls, Texas.

February 13, 1937.

Miss Cleo Bowers,
Court Reporter 78th District,
Wichita Falls, Texas.

Dear Miss Cleo:

On the bottom of this letter will you please give the amounts and dates of payment approximately of the money paid you for making the transcript of George Peckham checks.

My record shows $150.00 on May 31, 1936 and then on or about June 30th $50.00 and a few days thereafter another $10.00.

Thanking you for this favor, I am,

Yours very truly,
(Signed) E. E. SCANNELL.
404 Staley Bldg.

(On foot of same letter):

Mr. E. E. Scannell,
Wichita Royalty Co.,
City.

Dear Mr. Scannell:

Records in my file show, from copy of statement rendered Wichita Royalty Company on June 30, 1936, a check

for $150.00 dated June 17, 1936, credited thereon, and it shows the balance due of $60.00, which I have marked paid on July 2, 1936. It is my memory that this $60.00 was given to me in cash by you in the presence of Mr. G. L. Shapard.

I also have a note here that Mr. Guy Rogers paid Mr. Stewart $43.00 for photostats in connection with
1861 this deposition fee in the case of City Natl. Bk. vs. Wichita Royalty Company. February 15, 1937.

Yours truly,
(Signed) MRS. CLEO BOWERS ERWIN,
Court Reporter.

The Witness:

I have before me and exhibit to counsel, abstract of title showing the ownership of Block 44A, known as the property near the cemetery and support my testimony in respect to that transaction between me and George Peckham. I hand you certain letters in explanation of something Mr. Boone asked me, there is one in the record that I received from George Peckham in the amount of $150.00, which was his half interest in an interest I purchased in a lease in Wilbarger County, Texas, and these are the letters supporting that interest.

In an effort to accurately explain the inferences made in counsel's cross examination of me, I have spent much time in seeking to show the facts and what they are, and to account for these matters as best I could, so that the records might show I have accounted for all of the funds coming into my hands, and that neither George Peckham owes me anything, nor do I owe him anything.

Cross Examination.

By Mr. Boone:

Defendant's Exhibit 51 for $25.00, shown on my explaation, Defendant's Exhibit 177, I state, "George Peckham

and I used to hunt and fish together a great deal
1862 and this is probably payment on something of
that sort," But I do not have any supporting data on that. The next one is for $651.82, and my explanation is, "I am unable to definitely recognize this deal from the information given on George P kham's check, however, from my tax return, I have found that I had an interest in the Maer-Staniforth lease which cost me $500.00. When making up the analysis of George Peckham's personal checks around this date, I noticed that," then I recite details on it, I do not have any additional supporting data on that check. I have not been able to dig up the data on 1924, I do not have all of those checks, 1925 is where I begun.

Q. Now, then, the check of George Peckham to you for $80.00, that is the first one you have listed in 1925, Defendant's Exhibit 61?

Mr. Rogers:

Now, we renew the objection heretofore made for the purpose of the record. The objection being, as heretofore stated, when Mr. Boone first begun this inquiry on direct examination, that inquiry between the accounts of G. W. Peckham and E. E. Scannell personally and individually are immaterial to any matter in this case. No accounting is sought. It encumbers the record. It serves no useful purpose, and as stated, when these explanations were offered, they were but offered in the event that the Court should leave as evidence the original testimony offered upon cross examination by the bank and Mr. Harrell, as to matters personal between G. W. Peck-
1863 ham and E. E. Scannell, and our objection may be, under the agreemen., it has been, continued as to all of this.

The Witness:

I have given you all the explanation I can on that eighty dollars, the explanation on that is, "probably social."

"We used to have a little get-together among friends occasionally." I have also given you my explanation on the $1,000.00 item, Defendant's Exhibit 76, and I offer no other proof than my word that I did not get it. The check has my indorsement. If Mr. Peckham had not gotten his money on that check and accounted for it, he would not have kept me working for him very long; I do not know that it was given to the Wichita Royalty Company, because it hasn't any inference that it might have been a check to the Wichita Royalty Company. That is one of George Peckham's personal checks as far as I can see, would have no reference to the Wichita Royalty Company. As to June 15, 1926, during the time we are accusing George Peckham of taking some of the trust funds, I think the record bears out our contention in regard to George Peckham's action in this case—if the check had been made to the Wichita Royalty Company, I am quite sure the Wichita Royalty Company would have received
1864 credit for it. If the check was given to me and I indorsed it, I probably got the money on it and gave it back to him, in whatever form he wanted it. You will find in the record as you run through the analysis of George Peckham's check, were he gave many, many checks to his employees for large amounts of money to get cash, to go and get the money on, or something of that sort. That is an assumption of mine, but it is the best I can do, I know I did not get the money. I probably cashed the check for him and took the money back to him. The bank cashed this check and charged it to George Peckham's account, and I admit that I cashed the check, I did not get it personally. I have here the checks which pertain to our exhibit 177, ten of them, the first one is dated July 7, 1925, that is my interest in the Street and Ray well drilled on the Vernon land, in Wilbarger County. I got it from George Peckham and he and I were interested in the well and I think the title to the deed was in Ray and Massie or Street and Ray, I don't know which. Here is the Exhibit number on the check you asked me about. This check is in Exhibit 177, from me to George

Peckham. This shows what interest it was, and is just another one of the transactions between Mr. Peckham and myself, it did not have anything to do with the check you asked me about the other day. These next checks I hand you, October 25, 1925, is just another part of that same transaction, I have given you all the information I have in regard to them. I made what explanation I have to offer on each and every one of these and have
1865 given you the exhibit number where you refer to it. The next check for $1,170.00, you did not ask me about, it is not numbered as an exhibit, I will say in regard to that, that that is my interest in the Gray and Wheeler county land. You asked me about checks that came from George Peckham to me, and I gave you certain checks there which were from me to George Peckham. The check dated November 14, 1927, for $50.00, does not particularly pertain to any one you asked me about, except while George Peckham paid me money, you will find out I paid him some money. The one dated September 1927 for $13.20 does not have an exhibit number, on Oct. 13, 1927 I paid George Peckham $35.00. On February 19, 1925, I gave George Peckham a check for $2.00 revenue stamps on the Gambrell. On January 7, 1929 I gave R. R. Robertson a check for $300.00, that pertains to the $150.00 check that is in there, not to anything you asked me about. The check dated September 15, 1925, for $700.00, payable to W. H. Peckham, you did not ask me about that. As to why I did not get you supporting data on Exhibits 51, 52, 53, 55, 56, 57, 58, 61, 62, 64, 65, 66, 67, 68, 69, 70, 71, 72, and 78, I will say, that you know it works both ways. That is all I am trying to show, that I can account for and the moneys that I gave to George Peckham and the money that he gave to me, and I have attempted to show you as best I can what each amount was for, as near as I can tell. The data I have written out there is the best I can do.

I have handed you Exhibit 178, pertaining to
1866 my personal checks given the Marlborough Addition lots, beginning in March, 1926, going on down as late as July 29, 1930. I was interested in the

Marlborough Addition, went forward with my obligation; this is a summary of the whole thing, the notation is, "Payment on lots Marlborough, July 8, 1929." Payment credited to Marlborough books as made by E. E. Scannell, which checks were not furnished by E. E. Scannell, abstracts, etc. I will tell you what that is—you have not read the thing—in summarizing the thing, I show on here the checks which Marlborough show came to me. They have given me credit on their books for and I show in summarizing it, those which I have checks for which they do not show, and those which they show which I do not show a check for. And I have here the checks in support of it. I cannot identify some of the credits they have on their books and they do not give me credit for some of mine.

I have presented Exhibit 173, showing my salary account, checks given to me.

I have also presented Exhibit 180, a list of checks made payable to me, January 15, 1926, wherein check 462, for $1,200.00 was made payable to me. I testified the other day that this man was up here and he was a new man on the job, and I drew that money out, and redeposited it to the credit of the Wichita Royalty Company, the deposit slip shows a date 2-10-26. The collector did not state any specific amount to him at that time. On February 6, the amount was $974.69, and I drew out of the bank $1,200.00 on February 16, on January 18, $300.00, on January 19, $400.00. We did not know at that time how much the amount would be. My idea, under Mr. Peckham's direction, was to take the money out of the bank until such time as we could make an adjustment. On February 5, I don't know whether I knew how much they were claiming against the Wichita Royalty Company or not, I have produced a letter dated February 5, in regard to that matter. I have offered all the data I could find with reference to that matter. I drew out the bank on January 18 and 19, $700.00, according to Defendant's Exhibit 180, and de-

1867

posited in the bank on February 2, according to my deposit, $1,200.00.

Mr. Boone:
We offer the deposit slip in evidence.

DEFENDANT'S EXHIBIT 182.

Deposited in The Security National Bank, Wichita Falls, Texas By Wichita Royalty Co. Feb. 2, 1926 Checks as follows:

	E. E. Scannell	300.00
	E. E. Scannell	400.00
41	Total	700.00

Not negotiable Duplicate deposit ticket The Security National Bank By .....(?)

The Witness:
I would not say that I have presented all of the correspondence received from the treasury department, I ran across those letters in the files, and that is all I found.

1868 Mr. Boone:
We offer that in evidence, showing the date February 5.

DEFENDANT'S EXHIBIT 183.

Treasury Department

Internal Revenue Service.

Dallas, Texas.

Office of the Collector—February 5, 1925

Second District of Texas LT:LAP:MM

Wichita Royalty Company,
509 Security Nat'l Bank Bldg.,
Wichita Falls, Texas.

Sirs:

Your letter of February 1st, is acknowledged forwarding to this office an abatement claim in the amount of $974.69, which is to be considered in withholding the collection of the deficiency in corporation income taxes that was assessed against your company for the year of 1921 in the amount of $974.69. You request this office to accept the claim without bond for the reason that the taxes have been erroneously assessed.

Your attention is invited to Section 279(a) of the Revenue Act of 1924 which states that for a deficiency assessed under Section 274(d) of the Revenue Act of 1924, a claim for abatement may be filed accompanied by a bond. It, therefore, appears that the requirement in submitting a bond is mandatory.

1869 Please use the enclosed appropriate form in preparing, and returning the bond immediately.

Respectfully,

ENCL-LVR. (Signed) GEO. C. HOPKINS,
Collector LVR.

(in pencil) Withdrawal when?

The Witness:

I do not know whether I knew on February 6, the amount the government was claiming was $974.00 or not. I could not tell you why I waited until the 10th to redeposit this money. It was under Mr. Peckham's instructions.

Mr. Boone:

We offer the deposit slip in evidence.

DEFENDANT'S EXHIBIT 184.

City National Bank Deposited by Wichita Royalty Company Wichita Falls, Texas 2-10-1926 Checks as follows:

Transfer fees	2.25
E. E. Scannell	1200.00
E. E. Scannell tras	3287.22
Oil Runs	2593.93
	7083.40

The Witness:

If this file is not of any value to you, it is all right, if it is, th.. is the best I can do.

The indications are that we put up a bond on February 6. I put every cent of the money back in the bank, and the voucher checks show where it came out and the deposit slips show where it went back. It is not
1870 unusual for the government to make claims of that sort, against a man, and finally cut it down to a few dollars. Mr. Peckham was not in the habit of giving written instructions to his bookkeeper, therefore I do not have any written instructions as to the withdrawal of those funds. I have offered you all the data I have.

If I failed to list check No. 1,032, dated February 5, 1932, for $95.00, I will be glad to put it in. It was not my money, it was money paid out for expenses, the check was payable to me, it was for office supplies, salary, stationery, and so forth.

Check No. 1,050, 1936, dated June 29, for $541.92, was placed back in the bank, says it was transferred to cashier's check to avoid the possibility of garnishment by the City National Bank to be prorated to expense later, and it was deposited back in our account at the bank, on our cash memo No. 2470, First National Bank, October 9, 1926. I held it from May 29, until October 29. The next is check No. 1,051, May 29, 1936, for $2,860.56, deposited June 6, to our account in the First National Bank, it was taken from the bank for the same reason as 1,030. Check No. 1,052, $28.90, taken from the bank May 31, 1936, was paid out into the Stone Printing Company and to Railey and Heidrick Mapping Company, for postage and for expense of a trip to Graham and Archer City on taxes, $2.90 protest fees. Check No. 1,054, for $1,508.71, was a check that was converted into a cashier's check to avoid the possibility of garnishment, and de-
1871 posited back to our account on June 23, 1936. Between May 29, and June 6, there was no danger of garnishment. Check No. 1,055 for $563.47, converted into cashier's check, as the others, and re-deposited to the account on June 15, 1936, First National Bank. On June 5, 1936, the Wichita Royalty Company had an account in the First National Bank as shown by the statement. Check No. 1061 for $96.55, June 30, was an expense check, Railey Printing Company, $1.55; Stone Printing Company, $5.00; postage, $30.00; Cleo Bowers, $50.00. Cleo Bowers, $10.00. Check No. 1,064 July 6, 1936, is traveling expense where I made a trip to Oklahoma about some property that belongs to the Wichita Royalty Company. Check No. 1072, for $109.81 is converted into a cashier's check and I still have that. I have two cashier's checks now, I will get the amount of those for you, will make a list of each of the checks I have, I can do that in a few minutes.

Re-Cross Examiantion.

By Mr. Humphrey:

I have testified in detail about checks which George Peckham gave me, and which Peckham gave to the Royalty Company and the Royalty Company gave to Peckham, beginning in January, 1923, up to the time of George Peckham's death. In many cases, and particularly with reference to those that George Peckham gave to me, if I had had some of the information I now have, it would have been easier for me to find out. I made a statement here undertaking to detail the explanation of those
1872 checks.

George Peckham and I bought the Marlborough lots soon after the property was platted and subdivided. I bought those lots in good faith, as a speculation, hoping to make money out of them. If the other lots in the Marlborough Addition had been sold at a similar price to what I paid for those, that addition would have been a successful business venture, but the truth about the matter, I never was very hot on it. I bought some lots and spent a substantial amount of money, more than I should have

I have the income tax report of the Wichita Royalty Company, the last one, here it is. The report was rendered on the basis of a fiscal year instead of a calendar year, June 1, to May 31 of each year. The income tax report I hand you is May 31, 1936, I prepared it, and I think I swore to it as trustee. On that report I show the assets of the Wichita Royalty Company, the accounts receivable are $19,658.67, which consists of an item of $230.00 that is held in escrow in the First National Bank, pending the outcome of this suit, and $19,428.67, which is the Peckham claim, that W. H. Peckham declined to pay. I have a star showing that is in litigation. Cash on hand is $1,535.12. Notes receivable $2,000.00, there is also an indication showing that is in litigation, that is the money loaned the Texas Investment Company, two checks of $1,500.00 and $500.00, Stocks, $48,862.20, that is also one of

the items in litigation and the stock is in the Texas Investment Company. Oil and gas properties, per books and engineers valuation reports, analysis, $770,673.39, less depletion, $511,155.95, balance value of $259,-
1873 517.44. That is what that property is carried on the books at, and includes all of the oil and gas properties, no adjustment has been attempted to be made, it includes everything. I should have an indication there to show that it is in litigation. This item of $259,517.00 includes all of the real estate, but it makes no attempt to make any adjustment relative to this lawsuit, because I do not know what to do about it. I know that there should be an adjustment made, but I did not attempt to do it. The report shows notes payable, $22,000.00, that is, to the City National Bank, in this litigation. The income from oil and gas production was $4,416.17, that is income from those properties that were producing and is involved in this litigation. I show also a balance sheet at the close of business May 31, 1935, I show cash on hand, I show accounts receivable with a star showing that it is in litigation of $19,643.67; that is made up of George Peckham's claim against George Peckham's estate, and the $200.00 deposit. Notes receivable $2,000.00—that is payments I made from Wichita Royalty Company's account for the account of Marlborough Addition after I became trustee. The amount for stocks, $48,862.20, is the same stock in the investment company that was shown on the balance sheet of May 31, 1936, the oil and gas properties less depreciation, is a complete list of the same property as shown in the balance sheet, May 31, 1936, I think this includes all of the properties, including those which we in-
tend to repudiate, however, no attempt was made
1874 to make any adjustment, if adjustments were necessary to be made, because I did not know what to make. I took whatever position was necessary to take, that I could take, and then when the thing is finally adjusted, I will make the adjustments that are necessary. I signed and swore to this report in May, 1936, there was no attempt to make any statement to the

government that I did not think was proper, and if there is any errors the adjustment will be made. I swear to it as a true and correct statement, reflecting the property we had.

Mr. Humphrey:

We offer the report in evidence, Plaintiff's Exhibit 216.

PLAINTIFF'S EXHIBIT 216.

Return form marked "Duplicate" must be filed with this original return. Corporation Income and Excess-Profits Tax Return for Calendar Year 1935 or Fiscal Year Begun June 1, 1935, and ended May 31, 1936. Print Plainly Corporation's name and business address Wichita Royalty Company, Wichita Falls, Texas. Form 1120 Treasury Department Internal Revenue Service. Page 1 of Return. File Code ..... Serial Number ..... District.....

It is Essential, except where otherwise provided in the instructions, that this form be completely filled in irrespective of any statements, schedules, or reports submitted herewith. Date of organization June 1, 1920. Under laws of what State or County. Texas.

The Corporation's books are in care of E. E. Scannell, Located at Wichita Falls, Texas. Kind of business (in detail) Oil royalty business. Is this a Consolidated Return of Railroad Corporation? No. If so, of How Many Corporations? ..... If a Foreign Corporation, state Whether Resident or Nonresident .....; if Nonresident, State Amount of Income Excluded (instructions 33) From Gross Income, $..... Is the Corporation a Personal Holding Company Within the meaning of Section 351 of the Revenue Act of 1936? No. (If so, an additional return on form 1120 H must be filed.)

1875

Closing Balance Sheet

Wichita Royalty Company, Wichita Falls, Texas,

At the Close of Business May 31, 1936.

Assets.

*Accounts Receivable		$19,658.67
Cash on Hand		1,535.12
*Notes Receivable		2,000.00
*Stocks		48,862.20
Oil & Gas Properties—		
Per Books & Engineer's Valuation Reports (Analysis)	$770,673.39	
Less Depletion	511,155.95	259,517.44
Office Furniture (Less Depreciation)		213.86
		$331,787.29

1876

Liabilities.

Accounts Payable		$ 309.55
*Notes Payable		22,000.00
Nominal—		
Capital Stock Authorized	$1,000,000.00	
Capital Stock Unissued	185,085.00	814,915.00
Surplus	(—)	505,437.26
		331,787.29

*In Litigation.

1877 **Profit and Loss Statement.**

Wichita Royalty Company, Wichita Falls, Texas.

For the Fiscal Year Ended May 31, 1936.

Income—Oil & Gas Production		$4,416.77
Deductions—		
Office Supplies	$ 161.55	
Postage	19.00	
Clerical Expenses	650.00	
Maps, Prints Photostats	53.00	
Audits	500.00	
Telegraph and Telephone	35.67	
Traveling Expense	360.00	
Unclassified	2.90	
Legal Expense	1,395.55	
Depreciation Office Equipment	51.74	
Depletion @ 27½%	1,207.74	4,437.15
Net loss for period		$20.38

1878 **Analysis of Surplus.**

Wichita Royalty Company, Wichita Falls, Texas.

Return for the Fiscal Year Ended May 31, 1936.

Balance—May 31, 1935—Per books and prior return	(—)	$507,313.90
Adjustments—Per books		1,897.02
Additions—Net Loss for the period		20.38
Balance—May 31, 1936	(—)	505,437.26

1879 **Opening Balance Sheet.**

Wichita Royalty Company, Wichita Falls, Texas.

At the Close of Business May 31, 1935.

Assets.

Cash on Hand		$ 1.47
*Accounts Receivable		19,643.67
*Notes Receivable		2,000.00
*Stocks		48,862.20
Oil & Gas Properties—		
Per Books & Engineer's Valuation Reports (Analysis)	$770,673.39	
Less Depletion	509,948.21	260,725.18
Office Furniture—(Less Depreciation)		265.60
		$331,498.12

Liabilities.

Accounts Payable		1,987.02
*Notes Payable		22,000.00
Nominal—		
Capital Stock Authorized	$1,000,000.00	
Capital Stock Unissued	185,085.00	814,915.00
Surplus	(—)	507,313.90
		$331,498.12

*In Litigation.

1880 Affidavit (See Instruction 46).

We, the undersigned, president (or vice-president, or other principal officer) and treasurer (or assistant treas-

urer, or chief accounting officer) of the corporation for which this return is made, being severally duly sworn, each for himself deposes and says that this return (including its accompanying schedules and statements, if any) has been examined by him and is, to the best of his knowledge and belief, a true, correct, and complete return made in good faith, for the taxable year stated, pursuant to the Revenue Act of 1934 and the Regulations issued thereunder.

Sworn to and subscribed before me this 30 day of July, 1936.

....., Trustee.
(President or other principal officer.)

The Witness:

I have exhibited to you a report of the Wichita Royalty Company for the fiscal year beginning June 1, 1934, and ending May 31, 1935, income tax report made up under my oath, to the government of the United States, showing the income of that company during that year. It is a correct report. Accompanying the report I show a balance sheet of May 31, 1935, it is an exact copy. In this report I also show a balance sheet of May 31, 1934, in that balance sheet I show accounts payable $19,643.67, which includes the claim against the Peckham estate and another item of $200.00, that is accounts receivable. Then a $2,000.00 item, that represents the payment for the Wichita Royalty Company for the Marlborough Addition, after I was trustee. The stocks are the same as in the other report. Oil and gas properties, $770,673.38, less depletion, which is the same property that I had theretofore. I did not make any attempt to make any adjustment, because I didn't know what to do about it. I did show the Peckham claim is in litigation. I did show that the stocks in the Marlborough are in litigation. I did show the $2,000.00 item was in controversy. I did not show that the $22,000.00 note was in

1881

litigation, but it should be on there. I swore to the report.

Mr. Humphrey:
We offer it in evidence, Plaintiff's Exhibit 217.

PLAINTIFF'S EXHIBIT 217.

Form 1094 must be filed with this return Corporation Income and Excess-Profits Tax Return for Calendar Year 1934 or Fiscal year begun June 1, 1934, and ended May 31, 1935. Page 1 of Return.

1882 Form 1120 Treasury Department Internal Revenue Service. File Code ..... Serial Number ..... District ..... Print plainly corporation's name and business address. Wichita Royalty Company, Wichita Falls, Texas. It is essential except where otherwise provided, in the instructions, that this form be completely filled in irrespective of any statements, schedules, or reports submitted herewith.

Date of Organization June 1, 1920. Under the laws of what State or Country, Texas.

The Corporation's books are in care of E. E. Scannell. Located at Wichita Falls, Texas. Kind of business (in detail) Oil royalty business. Is this a Consolidated Return of Railroad Corporation? No. If so, How many Corporations? If a Foreign Corporation, state whether resident or non-resident .....; if non-resident, state amount of income excluded (instructions 33) from gross income, $..... Is the Corporation a personal holding company within the meaning of Section 351 of the Revenue Act of 1934? No. (If so, an additional return on Form 1120 H must be filed.)

Closing Balance Sheet

Wichita Royalty Company, Wichita Falls, Texas.

At the Close of Business May 31, 1935.

1883

Assets.

Cash on Hand		$ 1.47
*Accounts Receivable		19,643.67
*Notes Receivable		2,000.00
*Stocks		48,862.20
Oil & Gas Properties—		
Per Books & Engineer's Valuation Reports (Analysis)	$770,673.39	
Less Depletion	509,948.21	260,725.18
Office Furniture—(Less Depreciation)		265.60
		$331,498.12

Liabilities.

Accounts Payable		1,987.02
*Notes Payable		22,000.00
Nominal—		
Capital Stock Authorized	$1,000,000.00	
Capital Stock Unissued	185,085.00	814,915.00
Surplus	(—)	507,313.90
		$331,498.12

*In Litigation.

1884

Profit and Loss Statement.

Wichita Royalty Company, Wichita Falls, Texas.

For the Fiscal Year Ended May 31, 1935.

Income—Oil and Gas Production	$1,338.40

Deductions—		
Maps, Prints, photostats, etc.	5.50	
Office Supplies	22.60	
Printing, Stationery, etc.	251.00	
Postage	10.00	
Traveling Expense	341.50	
Telephone & Telegraph	8.40	
Unclassified	12.00	
Legal Expense	428.82	
Salaries Clerical & Executive...	1,150.00	
Depreciation on Office Fixtures..	51.74	
Depletion @ 275%	368.06	2,649.62
Net Loss for Period		1,311.22

1885 Analysis of Surplus.

Wichita Royalty Company, Wichita Falls, Texas.

Tax Return for the Fiscal Year Ended May 31, 1935.

Balance—May 31, 1934—Per Book and prior return	(—)	$506,002.68
Additions—Net loss for the period		1,311.22
Balance—May 31, 1935	(—)	507,313.90

1886 Opening Balance Sheet.

Wichita Royalty Company, Wichita Falls, Texas.

At the Close of Business May 31, 1934.

Assets.

Cash on Hand	$ 1.47
*Accounts Receivable	19,643.67
*Notes Receivable	2,000.00
*Stocks	48,862.20

Oil & Gas Properties—		
Per Books & Engineer's Valuation Reports (Analysis)	$770,673.39	
Less Depletion	509,580.15	261,093.24
Office Equipment—(Less Depreciation)		317.34
		$331,917.92

Liabilities.

Accounts Payable		$ 1,055.60
Notes Payable		22,000.00
Nominal—		
Capital Stock Authorized	$1,000,000.00	
Capital Stock Unissued	185,085.00	814,915.00
Surplus	(—)	506,002.68
		$331,917.92

*In Litigation.

Affidavit (See instruction 50).

(This affidavit same as affidavit appearing in Exhibit 216, except that the date differs, being November 21, 1935, on this return.)

1887 The Witness:

I hand you a copy of the report for the year ending May 31, 1933. Here is one ending May 31, 1934, showing the status of the Wichita Royalty Company account, the balance sheet as of May 31, 1934. It shows substantially the same as the other reports, shows the owned oil and gas properties in the amount of $770,673.39, less depletion. It includes the property we are seeking to repudiate, no effort to make any adjustment whatever, because I didn't know what to do. I merely show that the company is in litigation. I think this schedule of oil

and gas properties includes those properties which we now seek to repudiate, no attempt at any adjustment at all. In the balance sheet at the close of business May 31, 1933, I show practically the same facts, except I did show in 1933 oil and gas properties, per books, and engineers reports in litigation, no depletion figured on account of loss already sustained.

Mr. Humphrey:
We offer this in evidence.

PLAINTIFF'S EXHIBIT 218.

Form 1120A. Corporation Income and Excess Profits Tax Return, Internal Revenue Treasury Department, for Fiscal Year 1934. Fiscal Year begun June 1, 1933, and ended May 31, 1934. File this return not later than the Fifteenth Day of the Third month following the close of the Fiscal Year. Page 1 of Return. Print Plainly Corporations Name and Business Address. Wichita Royalty Co., Wichita Falls. File Code.... Serial Number.... District .... It is essential, except where otherwise provided in the instructions, that this form be completely filled in irrespective of any statements, or report submitted herewith. Kind of business Oil Royalty Company. Is this a consolidated return? No. If so, of how many corporations?.....

1888 Profit and Loss Statement.

Wichita Royalty Company, Wichita Falls, Texas.

For the Fiscal Year Ended May 31, 1934.

Income—		
Oil and Gas Production	$2,481.31	
Transfer Fee	.50	$2,481.81

Deductions—		
Office Rents	53.35	
Office Supplies	52.10	
Telephone & Telegraph	5.60	
Postage	26.00	
Federal Check Tax	.28	
Traveling Expense	148.50	
Legal Expense	523.26	
Salaries, Executive & Clerical	1,070.00	
Unclassified	21.00	
Depreciation	117.34	
Depletion at 27½%	682.36	$2,699.70
Net Loss for Fiscal Year Ended May 31, 1934		217.98

1889 Analysis of Surplus.

Wichita Royalty Company, Wichita Falls, Texas.

Tax Return for the Fiscal Year Ended May 31, 1934.

Balance—May 31, 1933—Per Books and prior return	(—)	$505,788.47
Adjustments—Adjustment to surplus from 1931 due to discovery small bank balance		3.77
Deduct—Net loss for the fiscal year		217.98
Balance—May 31, 1934	(—)	$506,002.68

1890 Closing Balance Sheet.

Wichita Royalty Company, Wichita Falls, Texas.

At the Close of Business May 31, 1934.

Assets.

Cash on Hand	$ 1.47
*Accounts Receivable	19,643.67
*Notes Receivable	2,000.00
*Stocks	48,862.20

Oil & Gas Properties—		
Per Books & Engineer's Valuation Reports (Analysis)	$770,673.39	
Less Depletion	509,580.15	261,093.24
Office Equipment—(Less Depreciation)		317.34
		$331,917.92

Liabilities.

Accounts Payable		$ 1,005.60
Notes Payable		22,000.00
Nominal—		
Capital Stock Authorized	$1,000,000.00	
Capital Stock Unissued	185,085.00	814,915.00
Surplus	(—)	506,002.68
		$331,917.92

*In Litigation.

1891 Opening Balance Sheet.

Wichita Royalty Company, Wichita Falls, Texas.

At the Close of Business May 31, 1933.

Assets.

Cash on Hand	$ 1.47
*Accounts Receivable	19,428.67
*Notes Receivable	2,000.00
*Stocks	48,862.20
*Oil & Gas Properties—Per Books & Engineer's Valuation Reports (Analysis)	770,673.39
Office Furniture—(Less Depreciation)	469.33
	$841,435.06

Liabilities.

Accounts Payable		1,410.74
*Notes Payable		22,000.00
†Depletion Reserve		508,897.79
Nominal—		
Capital Stock Authorized	$1,000,000.00	
Capital Stock Unissued	185,085.00	814,915.00
Surplus—May 31, 1933	(—)	505,788.47
		$841,435.06

*In Litigation.
†No Depletion figured account loss already sustained.

1892 Affidavit (See Instruction 53).

(Affidavit same as shown on Plaintiff's Exhibit 213, except for the date which is November 21, 1925, on this affidavit.)

The Witness:
I now hand you the report ended May 31, 1933, accompanying the report is a balance sheet, showing substantially the same facts as the other report. Showing oil and gas properties $770,673.39, less depletion, that does not show to be in litigation, however, it shows there was a litigation on the whole business.

Mr. Humphrey:
We offer it in evidence.

PLAINTIFF'S EXHIBIT 219.

Form 1020A.

Treasury Department,

Internal Revenue Service.

Corporation Income Tax Return for Fiscal Year 1933. Page 1 of Return. Fiscal Year Begun June 1, 1932, and ended May 31, 1933. File this return not later than the fifteenth day of the third month following the close of the fiscal year. File Code ..... Serial Number ..... District ..... Print plainly corporation's name and business address. Wichita Royalty Company, 1002 Staley Building, Wichita Falls, Texas. It is essential, except where otherwise provided in the Instructions, That this form be completely filled in irrespective of any statements, schedules, or reports submitted herewith..

Date of Organization June 1, 1920. Under the laws of what state or Country ..... The Corporation's Books are in care of E. E. Scannell, Trustee, located at Wichita Falls, Texas. Kind of Business Oil Royalties. Is this a consolidated Return of Two or More Corporations, No. If so, how many?.....

1893

Profit and Loss Statement.

Wichita Royalty Company, Wichita Falls, Texas.

For the Fiscal Year Ended May 31, 1933.

Income—Oil and Gas Production		$1,359.57
Expenses—		
Legal Advances	$ 357.48	
Office Supplies	85.00	
Salaries Executive & Clerical ..	2,400.00	2,842.43
Net Loss—For Fiscal Year ended May 31, 1933		1,482.86

Note: No depletion figured account loss already sustained.

1894 Analysis of Surplus.

Wichita Royalty Company, Wichita Falls, Texas.

Tax Return for the Fiscal Year Ended May 31, 1933.

Balance—May 31, 1932—Per Books and prior return	(—)	$504,305.61
Deduct—Net loss for the fiscal year ended May 31, 1933		1,482.86
Balance—May 31, 1933	(—)	505,788.47

1895 Closing Balance Sheet.

Wichita Royalty Company, Wichita Falls, Texas.

At the Close of Business May 31, 1933.

Assets.

Cash on Hand	$ 1.47
*Accounts Receivable	19,428.67
*Notes Receivable	2,000.00
*Stocks	48,862.20
Oil & Gas Properties—Per Books & Engineer's Valuation Reports (Analysis)	770,673.39
Office Furniture—(Less Depreciation)	469.33
	$841,435.06

Liabilities.

Accounts Payable	1,410.74
*Notes Payable	22,000.00

†Depletion Reserve		508,897.79
Nominal—		
Capital Stock Authorized	$1,000,000.00	
Capital Stock Unissued	185,085.00	814,915.00
Surplus—May 31, 1933	(—)	505,783.47
		$841,435.06

*In Litigation.
†No Depletion figured account loss already sustained.

1896 Opening Balance Sheet.

Wichita Royalty Company, Wichita Falls, Texas.

At the Close of Business May 31, 1932.

Assets.

Cash on Hand	$ 99.37
*Accounts Receivable	19,428.67
*Notes Receivable	2,000.00
*Stocks	48,862.20
Oil & Gas Properties—Per Books & Engineer's Valuation Reports (Analysis)	770,673.39
Office Furniture—(Less Depreciation)	469.33
	$841,532.96

Liabilities.

Accounts Payable	25.78
*Notes Payable	22,000.00
†Reserve for Depletion	508,897.79

Nominal—		
Capital Stock Authorized....	$1,000,000.00	
Capital Stock Unissued.....	185,085.00	814,915.00
Surplus—May 31, 1932	(—)	504,305.61
		$841,532.96

*In Litigation.
†No Depletion figured account loss already sustained.

1897

Affidavit.

We, the undersigned, president and treasurer of the corporation for which this return is made, being severally duly sworn, each for himself deposes and says that this return, including the accompanying schedules and statements, has been examined by him and is, to the best of his knowledge and belief, a true and complete return, made in good faith, for the taxable year stated, pursuant to the revenue act of 1932 and the Regulations issued thereunder.

....., Trustee.

Sworn to and subscribed before me this 1 day of July, 1933.

.....

The Witness:

The report of May 31, 1932, likewise contains a similar balance sheet, and likewise, it shows as assets of Wichita Royalty Company the various oil and gas properties that are now in litigation.

Mr. Humphrey:

We offer it in evidence, Plaintiff's Exhibit 220.

1898 PLAINTIFF'S EXHIBIT 220.

Form 1120A. Page 1 of Return.

Corporation Income Tax Return for Fiscal Year 1932.

Fiscal Year begun June 1, 1931, and ended May 31, 1932. File this return not later than the fifteenth day of the third month following the close of the fiscal year.

File Code..... Serial Number..... District .....

Print plainly Corporation's name and business address. Wichita Royalty Company, 1002 Staley Building, Wichita Falls, Texas.

Date of Organization June 1, 1920.

Under the laws of what State or Country .....

Kind of Business Oil Royalties. Is this a consolidated Return of Two or More Corporations? No. If so, how many? .....

Analysis of Surplus.

Wichita Royalty Company, Wichita Falls, Texas.

Tax Return for the Fiscal Year Ended May 31, 1932.

Balance—May 31, 1931—Per Books and prior return .....(—)		$501,686.21
Deduct—		
Net Loss for the Fiscal Year ended May 31, 1932.....	$ 448.58	
*Adjustment for Loss our interest in Porter Ranch, Archer County, Texas	2,170.82	2,619.40
Balance—May 31, 1932 .....(—)		$504,306.61

1899 Profit and Loss Statement.

Wichita Royalty Company, Wichita Falls, Texas.

For Fiscal Year Ended May 31, 1932.

Income—		
Lease Rental Income	$ 28.87	
Oil & Gas Production	3,800.64	$3,829.51
Expenses—		
Audits	290.51	
Gross Production Tax	12.89	
Legal Expenses	998.71	
Office Rent	250.00	
Office Supplies	20.70	
Postage	32.00	
Salaries, Executive & Clerical	2,612.00	
Telephone and Telegraph	2.78	
Unclassified	6.35	
Depreciation on office furniture	52.15	4,278.09
Net Loss—For Fiscal Year ended May 31, 1932		$448.58

Note: No depletion figured account Loss already sustained.

1900 Opening Balance Sheet.

Wichita Royalty Company, Wichita Falls, Texas.

At the Close of Business May 31, 1931.

Assets.

Cash in Banks	$ 53.50
Accounts Receivable	19,858.08
Notes Receivable	2,000.00

Lands	4,012.50
Stocks	48,862.20
Oil & Gas Properties	770,673.39
Office Furniture	521.48
	$345,981.15

Liabilities.

Accounts Payable		$ 12.89
Notes Payable		23,841.68
Reserve for Depletion		508,897.79
Nominal—		
Capital Stock Authorized	$1,000,000.00	
Capital Stock Unissued	185,085.00	814,915.00
Surplus—May 31, 1931	(—)	501,686.21
		$845,981.15

1901 Closing Balance Sheet.

Wichita Royalty Company, Wichita Falls, Texas.

At the Close of Business May 31, 1932.

Assets.

Cash on Hand	$ 99.37
*Accounts Receivable	19,428.67
*Notes Receivable	2,000.00
*Stocks	48,862.20
Oil & Gas Properties—Per Books & Engineer's Valuation Reports (Analysis)	770,673.39
Office Furniture—(Less Depreciation)	469.33
	$841,532.96

Liabilities.

Accounts Payable		25.78
*Notes Payable		22,000.00
†Reserve for Depletion		508,897.79
Nominal—		
Capital Stock Authorized	$1,000,000.00	
Capital Stock Unissued	185,085.00	814,915.00
Surplus—May 31, 1932	(—)	504,305.61
		$841,532.96

*In Litigation.
†No Depletion figured account loss already sustained.

1902

Affidavit.

(This affidavit the same as on Plaintiff's Exhibit 219, except for the date, which is July 1, 1932, on this affidavit; also this one is signed J. R. Terrill, Notary Public for Wichita County, Texas.)

The Witness:

I have handed you now the report ending May 31, 1931, that report shows oil and gas production, $6,975.00. It shows income from lease rentals and oil and gas production, $8,875.02, which is the income we collected off of those properties, such as the Grimshaw and the Stephens, I don't know which particular one. I list the J. B. Routon on the depletion report, we own the property, it just shows the operator. That gives the government an opportunity to check the royalty income with the lease owners. We list the royalty under the J. L. Anderson south pasture, also the royalty under the Grimshaw, also accompanying this list with the oil properties owned, give the depletion date. On the Grimshaw, we show the cost and depletion and the barrels that was produced up to May 31, 1931, that is pro-rated into the leases. This

report shows the Grimshaw royalty and produced 3,800 barrels of oil, it showed the reserve. It showed the Curtis Lane property, the J. B. Routon, J. L. Anderson south pasture, the Kunkle royalty, it shows as part of our assets the royalty interest in Callahan County. It showed the properties that George Peckham acquired in Gray and Wheeler counties, the cost of it. It showed the Ellis County properties in Oklahoma. It showed the Hartley County property, also the Pecos County property. It shows a balance sheet as at the close of business
1903 May 31, 1931. It includes in the balance sheet all oil and gas properties. This report, of this date, shows that the balance of our deposit in the City National Bank was $53.50—there was no controversy about that—I recognized that as correct. It showed that we owed the note of $22,000.00.

Mr. Humphrey:
We offer it in evidence, Plaintiff's Exhibit 221.

1904 PLAINTIFF'S EXHIBIT 221.

Form 1120A. Page 1 of Return.

Corporation Income Tax Return for Fiscal Year 1931.

Treasury Department, Internal Revenue Service.

Fiscal Year begun June 1, 1930, and ended May 31, 1931. File this return not later than the fifteenth day of the third month following the close of the fiscal year.

File Code..... Serial Number..... District .....

Print plainly Corporation's name and business address. Wichita Royalty Company, 1002 Staley Building, Wichita Falls, Texas.

Date of Organization June 1, 1920.

Under the laws of what State or Country .....

Kind of Business Oil Royalties. Is this a consolidated Return of Two or More Corporations? No. If so, how many? .....

Profit and Loss Statement.

Wichita Royalty Company, Wichita Falls, Texas.

For the Fiscal Year Ended May 31, 1931.

Income—		
Lease Rental Income	$ 155.26	
Oil & Gas Production	6,719.76	$6,875.02
Expenses—		
Business Subscriptions	$ 18.50	
Gross Production Taxes	40.34	
Interest Expense	205.17	
Legal Expense	2,902.25	
Office Rent	316.89	
Office Supplies, Stationery	44.70	
Postage	30.00	
Salaries, Executive and Clerical	4,311.00	
Telephone & Telegraph	32.00	
Unclassified Expense	13.75	
Depreciation & Fixtures—cost $579.42	57.94	
Depletion Sustained Per Schedule Attached	2,690.21	10,662.75
Net Loss—For Fiscal Year ended May 31, 1931		$3,787.73

Depletion Allowable.

Wichita Royalty Company, Wichita Falls, Texas, Tax Return for the Fiscal Year Ended May 31, 1931.

Property Name and Operator	Current Year Dollars	Barrels	Unit Rate	Current Depletion
J. A. Novotny—Prairie	649.08	524.34	1.29	676.50
J. W. See—Comar	15.11	10.31	6.89	43.46*
C. W. Coltry—Amerada	309.55	263.80	1.06	204.50*
Carmichael—Comar	64.82	56.57	1.06	69.96
Fred Beverlin—Comar	98.87	81.20	.96	77.95
J. B. Routon—Root	2.80	2.24	9.65	21.62
J. L. Anderson—Prairie	6.64	6.37	1.30	8.28
J. L. Anderson—Empire	70.30	65.93	2.56	3.33*
J. L. Anderson—Humble	27.40	25.77	2.38	61.33
Depletion on Basis Cost	$1,244.57	1,036.53		$1,156.83
West Texas—Meridian Pet. Co.	1.36	1.08	27½%	.37
Mann Hood—Lowry Oil Co.	11.56	12.91		3.18
D. M. Bishop—Waggoner Ref. Co.	6.93	6.41		1.90
Clay Wilson—H. A. O'Neil	18.23	18.91		5.01
S. M. Jameson—Priddy	11.25	10.70		3.10
A. J. Van Cleave—Kemp	71.32	60.30		19.61

Property Name and Operator	Current Year Dollars	Barrels	Unit Rate	Current Depletion
E. E. Elsea—Crenshaw	16.10	13.20		4.43
Evans—Various	61.42			16.89
Michna—Peer	33.01	31.05		9.08
Michna—Thomas	9.28	11.17		2.55
Galloway—Rockwell	14.06	15.17		3.87
J. Renner—Tucker	27.22	25.83		7.49
Grimshaw—Mid-Cont. Pet. Corp.	121.77	98.63		33.49
M. K. Graham—Pitzer & West	344.61	322.49		94.77
A. L. Owens—Simms	66.69	58.48		18.34
R. D. Owens—Prod. & Supply	277.94	233.10		76.43
R. D. Owens—Mid-Cont. Pet. Corp.	890.93	771.94		245.00
J. A. Driver—Mid-Cont. Pet. Corp.	16.61	14.84		4.57
J. A. Driver—Continental	97.00	86.37		26.68
J. W. Hughes—Seaboard	5.12	3.88		1.41
B. F. Eakin—Prairie	11.28	9.48		3.10
J. J. McGaw—Smith	41.27	32.62		11.35
J. J. McGaw—Sunray	49.79	42.82		13.70
J. J. McGaw—Pure	50.81	33.83		13.97
Ed. Ellis—J. K. Hughes	473.88	462.91		130.32
Blaydes—Amerada	36.46	30.53		10.02
Ellis Holmes—Davis	721.80	579.91		198.50

Ellis Holmes—Davis	180.45	144.97		49.62
Ellis Holmes—Eagle Picher	51.63	44.19		14.20
J. L. Anderson—Perkins	300.75	308.93		82.70
W. A. Brown—Tidal	8.73	7.39		2.40
W. F. McDaniel—Phillips	9.62	8.27		2.65
W. F. McDaniel—Blackwell	70.36	60.79		19.35
Dietrich—Various	1,062.32	981.55		292.14
W. O. Hayter—Rathke	87.69	93.76		27.50
Casinghead Gas—All Properties	316.67			87.08
Less Adjustment to Balance	100.73			
Depletion on Basis of 27½%	$5,475.19	4,638.41		1,533.38
Grand Totals	$6,719.76	5,674.94		2,690.21

*Depletion limited to amount shown above because reserve equals 100%.

1909 Oil Properties Owned—Cost and Depletion to Date.

Wichita Royalty Company, Wichita Falls, Texas, Tax Return for the Fiscal Year Ended May 31, 1931.

Property Name	Cost	Prior Barrels	Unit Rate	Reserve 5-31-30	Reserve 5-31-31
Bob Davis—Barnsdall Oil Co.	$27,500.00	3,630.09	7.14	25,918.84	25,918.84

Property Name	Cost	Barrels Prior	Rate Unit	Reserve 5-31-30	Reserve 5-31-31
Ellis Holmes—Eagle Picher	27,750.00	4,859.46	5.67	27,750.00	27,750.00
Ellis Holmes—J. D. Davis (1/32)..	23,000.00	9,618.11	2.34	23,000.00	23,000.00
Ellis Holmes—J. D. Davis (1/8)...	75,000.00	38,472.72	1.90	75,000.00	75,000.00
J. A. Novotny—Prairie O. & G. Co.	19,362.00	13,326.16	1.29	17,116.08	17,792.48
J. A. Novotny—White Eagle	14,683.50	8,509.10	1.51	12,848.74	12,848.74
J. W. See—Comar Oil Co.	20,000.00	2,867.40	6.89	19,956.54	20,000.00
Lou Catt—Carter Oil Co.	32,000.00	3,030.28	9.86	29,878.56	29,878.56
Grimshaw—Mid-Continent Pet...	937.50	1,334.43	.68	937.50	937.50
Grimshaw——Gulf Production Co.	2,812.50	1,064.08	2.17	2,309.05	2,309.05
Grimshaw—Cheney & Miller	3,750.00	1,413.83	2.60	3,682.51	3,682.51
C. W. Goltry—Amerada Pet Corp.	11,500.00	10,514.30	1.06	11,295.50	11,500.00
W. F. McDaniel—Phillips Pet. Co.	250.00	327.82	27½%	250.00	250.00
W. F. McDaniel—Phillips Pet Co.	250.00	327.82	27½%	250.00	250.00
W. F. McDaniel—Blackwell O. & G.	1,375.00	1,259.59	27½%	1,375.00	1,375.00
Carmichael—Comar Oil Co.....	2,000.00	1,804.44	1.06	1,924.24	1,984.20
Fred Beverlin—Comar Oil Co.....	5,500.00	5,103.71	.96	4,961.79	5,039.74
W. A. Brown—Humble O. & R. Co.	2,500.00	1,012.99	27½%	2,500.00	2,500.00
W. A. Brown—Tidal Oil Co.	2,500.00	355.02	27½%	2,500.00	2,500.00
Curtis Lane—Hobbs et al.	663.75	20.89		663.75	663.75
W. O. Hayter—Rathke Oil Co.....	8,900.00	1,120.97	7.30	8,900.00	8,900.00
L. M. Hayter—Humble O. & R. Co.	100.00	24.41	4.43	100.00	100.00

J. B. Routon—Root Drilling Co....	2,500.00	212.70	9.65	2,117.89	2,139.51
J. L. Anderson — Fain - McGaha Corp.	100.00	33.03	2.44	100.00	100.00
J. L. Anderson—Prairie O. & G. Co.	100.00	49.71	1.30	64.24	72.52
J. L. Anderson—Empire O. & R. Co.	1,600.00	650.07	2.56	1,596.67	1,600.00
J. L. Anderson—Humble O. & R. Co.	2,400.00	820.15	2.38	1,983.80	2,045.13
J. L. Anderson—Perkins & Cullum	6,800.00	2,600.88	2.52	6,800.00	6,800.00
Deitrich—Sun Oil Co.	1,000.00	939.97	.82	1,000.00	1,000.00
Dietrich—Magnolia Pet. Corp.....	500.00	600.52	.73	500.00	500.00
	$297,084.25	115,676.83		287,030.70	288,187.53

West Texas—Meridian Pet.	$2,600.00
Mann Hood—Lowry Oil Corp.....	250.00
D. M. Bishop—Waggoner et al.....	900.00
Clay Wilson—H. A. O'Neil	2,000.00
S. M. Jameson—W. M. Priddy....	500.00
A. J. Van Cleve—Oscar Kemp	3,875.00
E. E. Elsea—Albert Crenshaw....	8,000.00
Evans—Various	7,640.00
Michna—Peer et al.	11,750.00
Galloway—J. A. Rockwell	5,250.00
J. Renner—Tucker Oil Co.....	6,000.00

Property Name	Cost	Barrels Prior	Rate Unit	Reserve 5-31-30	Reserve 5-31-31
Graham—Pitzer & West	47,500.00				
A. L. Owens—Simms Oil Co.	25,100.00				
R. D. Owens—Mid Cont. et al.	69,300.00				
J. A. Driver—Continental et al.	17,500.00				
J. W. Hughes—Seaboard O. & G.	600.00				
B. F. Eakin—Prairie O. & G.	4,200.00				
J. J. McGaw—E. L. Smith & Co.	3,000.00				
J. J. McGaw—Sunray Oil Co.	3,000.00				
J. J. McGaw—Pure Oil Co.	3,000.00				
Ed. Ellis—J. K. Hughes	12,000.00				
Blaydes—Amerada Pet. Corp.	4,000.00				
C. F. Kunkel—Prairie et al.	–o–				
Developed—Non-Producing					
Victor	1,050.00				
Michna—Berin & Rubin	1,250.00				
College Heights	250.00				
J. A. Driver—Sun Co.	10,000.00				
McClure	800.00				
J. E. Musick	650.00				

McIntosh	10,000.00				
Riversand	112.50				
Julia Brunner	7,000.00				
	$269,077.50	143,117.99		$219,176.88	$220,710.23
Undeveloped Properties					
Callahan County, Texas	2,500.00				
Gray and Wheeler Counties, Texas	10,000.00				
Ellis County, Texas	160.00				
Hartley County, Texas	1,920.00				
Pecos County, Texas	640.00				
	15,220.00				
Total Cash Cost	581,381.75				
Appreciation Set Up	189,291.64				
Grand Totals	770,673.39	258,794.82		506,207.58	508,897.79

1639

1914 Opening Balance Sheet.

Wichita Royalty Company, Wichita Falls, Texas.

At the Close of Business May 31, 1930.

Assets.

Cash in Banks—		
City National Bank	$2,917.77	
Security National Bank	80.67	$2,998.44
Accounts Receivable—		
For Sale of Oil	32.32	
For Money Advanced	19,428.67	19,460.99
Notes Receivable—		
For Property Sold	2,750.00	
For Money Advanced	2,000.00	4,750.00
Land—Owned in Fee	4,012.50	
Stock—In Land Development Company	48,862.20	52,874.70
Oil & Gas Properties—Per Books & Engineer's Valuation Reports (Analysis)		770,673.39
Permanent—Office Furniture, less depreciation		679.42
		$851,336.94

1915 Liabilities.

Notes Payable—		
For Money Borrowed	26,389.08	
For Land in Fee	1,841.68	28,230.76
Reserve—For Depletion of Oil & Gas Properties (Analysis)		506,207.58

Nominal—		
Capital Stock Authorized....	1,000,000.00	
Capital Stock Unissued.....	185,085.00	814,915.00
Surplus—May 31, 1931—Per Books and Annexed Analysis .....(—)		498,016.40
		$851,336.94

1916 Closing Balance Sheet.

Wichita Royalty Company, Wichita Falls, Texas.

At the Close of Business May 31, 1931.

Assets.

Cash in Banks—City National		53.50
Accounts Receivable—		
For Sale of Oil	429.41	
For Money Advanced	19,428.67	19,858.08
Notes Receivable—For Money Advanced....		2,000.00
Lands—Owned in Fee	4,012.50	
Stocks—(Litigation) In Land Development Company	48,862.20	52,874.70
Oil & Gas Properties—Per Books & Engineer's Valuation Reports (Analysis)..		770,673.39
Permanent—Office Furniture, Less Depreciation		521.48
		$845,981.15

1917 Liabilities.

Accounts Payable—Current		12.89
Notes Payable—		
For money borrowed (litigation)	22,000.00	
For land in fee	1,841.68	23,841.68
Reserve—For Depletion of Oil & Gas Properties (Analysis)		508,897.79
Nominal—		
Capital Stock Authorized	1,000,000.00	
Capital Stock Unissued	185,085.00	814,915.00
Surplus—May 31, 1931—Per Books and Annexed Analysis	(—)	501,686.21
		$845,981.15

1918 Analysis of Surplus.

Wichita Royalty Company, Wichita Falls, Texas.

Tax Return for the Fiscal Year Ended May 31, 1931.

Balance—May 31, 1930—Per Books and prior Return	(—)	498,016.40	
Add—Adjustment in accordance with J. E. #4, Sept. 30, 1930		117.92	(—) $497,898.48
Deduct—Net Loss for the Fiscal Year Ended May 31, 1931			3,787.73
Balance—May 31, 1931—Per Company Books			(—) 501,686.21

Affidavit—(This affidavit same as appears on Plaintiff's Exhibit 219, except for the date which on this affidavit is August 15, 1931. Signed E. E. Scannell, Trustee, before C. L. Lorenz, Notary Public.)

1919 The Witness:

That report was sworn to by me. I don't remember when the cross petition was filed, you will have to refer to the petition to see the date.

O. C. DICKSON, a witness for the Plaintiff, being first duly sworn, examined in chief by Mr. Humphrey, testified as follows:

My name is O. C. Dickson. I have been subpoenaed here as a witness.

On June 25, 1925, I was employed by Murchison and Fain, I find that on that date George Peckham paid the Murchison and Fain Oil Company $9,493.75, by a check drawn on the Security National Bank. That is in the handwriting of Charles P. McGala, he is one of the members of the firm of Murchison and Fain. The consideration for that check was one/128 interest in 217 acres of land known as the J. L. Anderson land—that is 1/16th of the 1/8th royalty—I made a mistake, that is 245 acres instead of 217 acres. I have a copy of the mineral deed, it is 1/128th of the minerals under that land as a royalty interest.

Cross Examination.

By Mr. Rogers:

He paid that amount by check introduced in evidence, marked "Plaintiff's Exhibit 178." His check was deposit-

ited to our account in the City National Bank on

1920 June 25, 1925. The date of the conveyance to him is June 30, 1925.

Mr. Rogers:

I offer the instrument in evidence, Defendant's Exhibit 185.

DEFENDANT'S EXHIBIT 185.

Mineral Deed.

C. W. Murchison, E. R. Fain and Chas. P. McGaha trustees of Murchison and Fain Oil Company, Wichita Falls, Texas, to G. W. Peckham, Grantee.

Consideration $10.00 and other valuable consideration.

Conveying unto said grantee an undivided 1/128th interest in and to all of the oil, gas, and other mineral in and under, and that may be produced from the following described land situated in Archer County, Texas.

The South sixty acres of the West eighty acres of Block No. 22, Anderson South Pasture Sub-Division.

The North twenty-five acres of the east Fifty acres of the West one hundred acres, block 19, Anderson South Pasture.

The East sixty acres of the West one hundred and sixty acres of Block No. 19 Anderson south pasture subdivision.

Dated June 20, 1925.

Duly acknowledged on June 20, 1925.

The Witness:

Our check No. 1,514.00 for $2,125.00, payable to the order of G. W. Peckham, paid July 29, 1925, was issued for a mineral deed from Mr. Peckham to Murchison and Fain Oil Company dated July 1, 1925, covering
1921 an undivided 1/32nd interest in and to the oil, gas and other minerals in and under the south

thirty-two acres of block 21, South Anderson land. I will read the description; as shown by map or plat of record in the office of the county clerk of said county. The south sixty of the west eighty of block 22, Anderson South Pasture Subdivision the north twenty-five acres of the east fifty acres of the west one hundred acres, block 19, Anderson South Pasture; the east sixty acres of the west one hundred and sixty acres of block 19, Anderson South Pasture subdivision, all in Archer County, Texas. It is 1/32nd of all the oil royalty and gas and rental on royalties due to be paid under the terms of said lease. The land is as follows, to the Empire, thirty-two acres, Cullum, sixty acres; Prairie Oil and Gas, forty acres; Weldon, twenty-five acres; Constantine, twenty acres. The date of the deed is July 1, 1925. There was no other dealings between Murchison and Fain Oil Company and Mr. Peckham in respect to these Anderson lands, to my knowledge.

Re-Direct Examination.

By Mr. Humphrey:

I knew George Peckham during his lifetime, he was a very good friend of mine. He was actively engaged in buying and selling oil properties and royalties and leases during his lifetime and handled substantial sums of money, and dealt with substantial people. I know his general reputation for honesty and never heard
1922 it questioned during his lifetime.

Mr. Boone:

I have Mr. Harrell's income tax return for the years 1925 and 1926, which I tender to counsel for Wichita Royalty Company.

E. E. SCANNELL, recalled for further direct examination by Mr. Rogers, testified as follows:

I have handed you the memorandum book of G. W. Peckham written in his own handwriting. On page 107

it says, "Paid Royalty on 217 acres Norday Company, $16,500.00, sold for $28,675.00, profit $12,175.00; one-half twenty acre lease in Vernon, from W. H. Peak for $3,000.00 forfeited for rents, loss $3,000.00." The Anderson pool was known as the Norday pool. The discovery well was drilled there, the Norday, and that is the way it is designated. Take for instance, the Cross Plains pool, it was around there right close to Cross Plains and that is the name they gave it, as they also did the Bristow pool and the Tonkowa property.

Cross Examination.

By Mr. Humphrey:

I have the deed from George Peckham to Wichita Royalty Company covering the south Anderson land. It is the south thirty-two acres in block 21, Plaintiff's Exhibit 174. On July 1, 1925, George Peckham conveyed to Wichita Royalty Company an undivided 1/16th interest in the oil and gas in the following land; the south sixty acres of the west eighty acres of block 22, and the north twenty-five of the east fifty of the west one hundred of block 19, and the east sixty of the west one hundred and sixty of block 19.

1923

The interest conveyed by Defendant's Exhibit 185, deed from Murchison and Fain Oil Company to G. W. Peckham, dated June 20, is 1/128th interest in and to the minerals. The deed from Peckham to the Royalty Company recites that the 1/16th interest is to an oil and gas lease, which would make the conveyance equivalent to 1/128th royalty interest. The property described in the conveyance from Murchison and Fain to Peckham is the south sixty acres of the west eighty acres of block 22, and the north twenty-five acres of the east fifty acres of the west one hundred acres of block 19, and the east sixty acres of the west one hundred acres of block 19. In the Murchison and Fain deed, it has one hundred and forty-five acres, and in the deed from Peckham to the royalty

company it says one hundred and seventy-seven acres. In other words, he conveyed thirty-two acres more, but conveyed the identical property and the identical interest that he got from Murchison and Fain to the royalty company.

1924 Re-Cross Examination.

By Mr. Boone:

I have read from a book of George Peckham in his handwriting, I don't know the date, this indicates—I don't know whether it is April, 1925, or not, here is the beginning in February, 1925. I read on page 107. The date on page 106, is 4-28—on Page 108 it is May 5. If you look in between May 5 and April 28, there is an entry dated July 28, I presume they are all in 1925. I think that is the same 217 acres involved in this check of nine thousand and some odd dollars, because it is the Norday acreage, and the amount is the same, the Norday pool is the Anderson pool. I don't know whether he bought other pieces of property in the Norday pool or not. The deed shows that Mr. Peckham sold some to Murchison and Fain in the Norday pool. I couldn't say whether he made a profit on the transaction. I do not say that George Peckham made a profit off of this company on the Murchison and Fain deal, I am offering it for whatever it is worth, it is in the record. The vouchers show on these two pieces of property that he acquired from Murchison and Fain, Voucher No. 385 on the Anderson that we got from George Peckham recites that we got 1/16th royalty on all of block 21, east twenty-five acres and the north fifty acres, the west one hundred acres, block 19, the east sixty acres of the west one hundred and sixty acres of block 19; south sixty acres of the west eighty acres, block 22, J. L. Anderson south pasture subdivision, Archer County, Texas; 1/8th royalty of the west half of the southwest quarter, northwest
1925 quarter, section 2, J. Pointevant Survey, Young County, Texas; 217 acres in the J. L. Anderson

subdivision known as the Norday district; twenty acres in the J. Pointevant Survey, Young County. For $6,000.00. Then check No. 387 says, 1/16th royalty on all of block 21 in the east twenty-five acres of the north fifty acres of the west one hundred acres, block 19, east sixty acres, west one hundred and sixty acres, block 19; and the south sixty acres of the west eighty acres, block 22, J. L. Anderson pasture subdivision Archer County, Texas; 1/8th of the royalty on the west one-half of the southwest quarter of the northwest quarter of section 2, J. Pointevant Survey, Young County, Texas. Consideration $5,000.00. He paid $11,000.00 for it. Then he bought 217 acres royalty in the pool—I don't know exactly what he bought in there, he bought some of the Pointevant Survey.

Re-Cross Examination.

By Mr. Morrow:

I saw Mr. F. O. Harrell some time in the fall of 1936, both here and in Oklahoma City. I was with him in old Mexico this summer. He was here two or three times and I saw him several different times, also in Oklahoma City. I don't know whether it was before or after the amended cross action including these items filed, the records will show when the cross action was filed.

1926 M. E. WALLACE, a witness for the Defendant, being first duly sworn, examined in chief by Mr. Rogers, testified as follows:

My name is M. E. Wallace. I have lived in Wichita Falls since September of 1920. I am a Certified Public Accountant, my certificate is dated August 11, 1928, No. 300.

Some time ago I was employed by Mr. Scannell, trustee of the Wichita Royalty Company, to make some inves-

tigation with respect to this litigation. I have read the pleadings. I have read the decision in the Supreme Court in this case. When I was employed, I found that Mr. Sheppard had done considerable work in the matter. His associate had died last fall, Mr. Sheppard was not in the best of health, according to my information. I found that Mr. Sheppard had made a list of all of the checks and deposits of G. W. Peckham with the City National Bank from January 2, 1923, to the date of Mr. Peckham's death. Mr. Sheppard is here in town. These work sheets show, and carry forward daily the deposits and withdrawals with a classification of transferred funds and funds deposited from other sources. There was a good deal of preliminary work done prior to my investigation. I have been advised, from the pleadings and other sources, the item I was requested to check into and determine the bank received upon the personal indebtedness of G. W. Peckham out of his account with the bank into which moneys were deposited in Wichita Royalty Company's account and transferred into G. W. Peckham's account.

From the information I had, I have picked out
1927 the specific items and specific properties and specific periods of time and from the photostatic copy of the bank's records and from the records of the Wichita Royalty Company and from the deposition of Mr. Deaton, into which was copied canceled checks of G. W. Peckham, I have endeavored and have analyzed several accounts between the parties covering the specific periods of time. In addition to that, I have read the first twelve volumes of the testimony, and have checked my report and the various items in it against the books and records of the Wichita Royalty Company in so far as they are applicable and against the checks of G. W. Peckham and against the bank records, and against the exhibits and testimony that has been introduced in evidence. I found in reading the testimony that all of the record with reference to one particular item is not in one place, but is scattered throughout the testimony. I have endeavored to go through the record and go through the books and

records of the Wichita Royalty Company so that I might, in a condensed form, and in a related matter, set down what I find the facts to be with respect to the several properties designated upon the books and records of the Wichita Royalty Company.

Mr. Rogers:

I will ask that that instrument be marked for identification, Exhibit 186 of Defendant, and also ask that this other instrument be marked for identification, Defendant's Exhibit 187.

The Witness:

Defendant's Exhibit 186 is a typewritten re-
1928 port consisting of thirty three pages and an index, in two divisions. The first nine pages of which is a narrative, in chronological form, describing certain properties from the period of January 1, 1926, to March 9, 1926, and the latter part of the first division, being page 1659, deal with transactions on the Marlborough Addition, moneys that were deposited and are drawn on the trust funds, which found their way into the Marlborough Addition. The second section, beginning with page 1661 and going through Page 1676, is a narrative description of the various repudiated properties, beginning No. 71 Grimshaw; 75 Luke Wilson; 76 J. H. White; 78 Curtis Lane; 79 Routon; 80 Anderson; 81 Callahan County; 83 Porter Ranch; 93 Ellis County, Oklahoma; 94 Hartley County; 95 Anderson; 96 Paulk; 97 Millner oil payment, in the series of pages I have made a brief on each property trying to show the history of it in chronological form, as to acquisition, the purchase, the operation, its cost, profits, and such other information as I thought might be pertinent to that particular property. I showed what each of such properties has cost the royalty company and what the royalty company has received from the respective property. I have traced the cost of the receipts of the property, and I think in each one a little statement showing the net re-

sults of the ownership. I believe the facts found are correct.

Mr. Rogers:

We offer in evidence Defendant's Exhibit 186, with the exception of pages .... and ...., as follows:

1929 INDEX.

Summary.
Property #71, Grisham.
Property #75, Luke Wilson.
Property #76, J. H. White.
Property #78, Curtis Lane.
Property #79, Routon.
Property #80, Anderson.
Property #81, Callahan County.
Property #83, Porter Ranch.
Property #93, Ellis County, Okla.
Property #94, Hartley County.
Property #95, Anderson.
Property #96, Polk.
Property #97, Milner Oil Payment.

1930 January, February, and March, 1926.

Analysis of Inter-Related Accounts of Wichita Royalty Company, City National Bank of Wichita Falls, C. W. Peckham, J. T. Harrell and W. R. Peckham.

On January 1, 1926, G. W. Peckham and J. T. Harrell were good friends. Mr. Peckham was Trustee of Wichita Royalty Company; Mr. Harrell was an executive officer of the plaintiff bank. They were business associates. These men were partners in the large suburban venture known as Marlborough Addition (See Mr. Harrell's testimony, p ..... There were then negotiating with W. S.

Curlee for their jointly interested in New Mexico leases (See G. W. Peckham's check to J. T. Harrell dated Jan. 24, 1925.) They also owned undivided interests in a producing property known as Stephens royalty. Mr. Peckham acquired his interest in Stephens Royalty as of November 3, 1925, from J. T. Harrell and C. E. Basham (Mr. Carson's testimony, pp. .....)

On January 1, 1926, Mr. J. T. Harrell owed the plaintiff Bank $7,500.00. This indebtedness was increased on January 11, 1926, to $10,060.00. Eight days later, on January 9, 1926, Mr. Harrell's indebtedness was again increased to $15,574.44 (Mr. Harrell's testimony, p. ....; Mr. Carson's testimony, p. ....).

On the date of Mr. Harrell's second increase of his indebtedness to the Bank (January 9, 1926), Mr. Peckham owed the bank $28,050.00 (Mr. Carson's testimony p. ...., defendant's Ex. 126, p. ....). On the same date he owed Mr. Harrell and Mr. Basham $5,000.00 and interest on notes executed November 3, 1925, for his purchase of the Stephens Royalty (See Mr. Harrell's testimony, p ....). Mr. Harrell and Mr. Peckham were also jointly and severally liable to the Highland Irrigation Company on vendor's lien notes for the purchase of Marlborough property totaling $52,939.00 and interest (Mr. Harrell's testimony, p. ....).

1931

On January 1, 1926, Wichita Royalty Company owned valuable properties and was not indebted to the Bank for loans (Mr. Harrell's testimony, p. ....). G. W. Peckham's personal indebtedness to the bank was $28,050.00.

Some time before January 1, 1926, negotiations were begun for a second sale between J. T. Harrell and G. W. Peckham for the purchase and sale of the remaining interest of J. T. Harrell and C. E. Basham in Stephens Royalty (pp. .....). J. T. Harrell and C. E. Basham executed the deed on January 1, 1926, conveying such remaining interest to Wichita Royalty Company (defendant's Exhibit No. 8, p. ....).

This sale by J. T. Harrell and C. E. Basham to Wichita Royalty Company was for a consideration of $22,200.00

to be paid J. T. Harrell and C. E. Basham and G. W. Peckham's conveying to J. T. Harrell and C. E. Basham the half interest of G. W. Peckham in the Curlee land jointly owned by J. T. Harrell and G. W. Peckham. The consideration was paid by G. W. Peckham. He conveyed his interest in the Curlee tract and paid from his commingled account the following payments, which included interest on deferred payments:

Jan. 15, 1926, J. T. Harrell, $1,100.60, Page .....
Jan. 15, 1926, C. E. Basham, $1,100.60, Page .....
Jan. 25, 1926, J. T. Harrell, $5,014.00, Page .....
Jan. 25, 1926, C. E. Basham, $5,014.00, Page .....
Mar. 6, 1926, J. T. Harrell, $2,530.00, Page .....
Mar. 6, 1926, C. E. Basham, $2,530.00, Page .....
Mar. 31, 1926, J. T. Harrell, $2,543.50, Page .....
Mar. 31, 1926, C. E. Basham, $2,543.50, Page .....

Peckham's deed to the Curlee interest recited $4,814.00 cash payment (p. .....). It seems Mr. Peckham and Mr. Harrell each paid $2,567.75 for the interest (Mr. Carson's testimony, p...., Plaintiff's Exhibit 45, p. ....). Am informed that the Examiner's notes not yet transcribed show that Mr. Harrell testified that he and Mr.
1932 Basham took in the Curlee interest for $3,567.75, knowing that G. W. Peckham was making a $1,000.00 profit in the transaction whereby J. T. Harrell and C. E. Basham sold Wichita Royalty Company this Stephens royalty interest.

At the beginning of business January 4, 1926, Mr. Peckham's personal balance was $878.75 (plaintiff's Exhibit 45, p. ...). On the same day trust check No. 452 was drawn on the plaintiff bank payable to G. W. Peckham for $5,000.00; which Mr. Peckham deposited on that date to his personal account (plaintiff's Exhibit 66, p. ...., also Mr. Carson's testimony, p.....). The deed to Wichita Royalty Company is dated January 1, 1926. Mr. Peckham caused trust records to show this $5,000.00 to apply on Stephens royalty purchase. This check is dated

January 4, 1926, deposited to Peckham's personal account, from which he subsequently paid J. T. Harrell and C. E. Basham the first payment on Stephens royalty. It would thus appear that the deed from Harrell and Basham to the Stephens Royalty was in fact signed the date it was dated.

The next day after Peckham deposited $5,000.00 of trust funds in his account, and on January 5, 1926, Mr. Peckham paid from his commingled account $812.00 to Highland Irrigation Company, being his part of the joint purchase of additional Marlborough Acreage by Peckham, Harrell, Peckham and Kemp (Plaintiff's Exhibit 45, p. ...; Carson's testimony, p. ....).

From this date, January 5, 1926, to January 11, 1926, G. W. Peckham's commingled account consisted wholly of trust funds. On January 11, 1926, trust check No. 458 was drawn on and payable to the plaintiff Bank's order in the sum of $5,000.00 (plaintiff's Exhibit 67, p. ....; Mr. Carson's testimony p. ....). This $5,000.00 was deposited by Mr. Peckham in his commingled account. On the same day he paid $2,567.75 out of the commingled funds to Mr. Curlee as his part of the joint purchase with Mr. Harrell of the Curlee land. This personal interest of G. W. Peckham was later conveyed to Harrell and Basham as a part of the consideration for the conveyance to Wichita Royalty Company of Stephens royalty.

1933

The next day, January 12, 1926, at which time Mr. Peckham's commingled account consisted wholly of trust funds, he paid $454.50 to the Highland Irrigation Company as a payment on the joint purchase by Messrs. Harrell and Peckham on their Marlborough venture (p. ...).

Four days later, January 16, 1926, Wichita Royalty Company's liability record with the plaintiff bank was charged with $15,300.00, which the Wichita Royalty Company did not get credit on their bank account for the loan until January 18, 1926, two days after the date of the liability record. This $15,000.00 loan was negotiated between J. T. Harrell for the bank, and G. W. Peckham,

trustee of Wichita Royalty Company. Very frequently when application is made for a fifteen or twenty thousand dollar loan, inquiry is made as to the intended use of the proceeds (See Mr. Harrell's testimony).

On January 16, 1926, the date the loan was made, Mr. Peckham paid Messrs. Harrell and Basham from his commingled account $2,211.32 (Plaintiff's Exhibit 71, p. ....; Mr. Carson's testimony p. ...; Plaintiff's Exhibit 45, p. ....., also Mr. Carson's testimony p. .....). Of this amount $1,362.87 was trust funds previously transferred from the trust account.

Two days after the above transaction, being January 18, 1926, the above mentioned $15,000.00 trust loan was deposited to the credit of Wichita Royalty Company's account in plaintiff bank on the same day trust check No. 461, in the amount of $15,769.07 was drawn payable to the order of plaintiff bank and deposited to Mr. Peckham's commingled account (Mr. Carson's testimony p. ....; plaintiff's exhibit 45, p. ....; plaintiff's exhibit 68, p. .....

Seven days later, January 25, 1926, before another deposit had been made to Peckham's personal account and while the account still consisted of trust funds,

1934 Mr. Peckham paid to Harrell and Basham $10,028.00 (Plaintiff's Exhibit 45, p. ....; Mr. Carson's testimony p. ....). Half of the check was deposited to Mr. Harrell and the remaining to Mr. Basham. On this date the beginning balance of Mr. Harrell's deposit was $219.16 (defendant's exhibit 128, p. ....). His personal liability to the Bank was $15,574.44 (defendant's exhibit 127, p. ....).

On the same day Mr. Harrell, the executive officer of the Bank who negotiated the loan of January 16th for $15,000.00 (Mr. Harrell's testimony p. ...) to the Wichita Royalty Company out of which proceeds he received $5,014.00 as shown above, paid plaintiff Bank $5,006.67 on his private debt (defendant's exhibit 127, p. ...; defendant's exhibit 128, p. ....). The balance in Mr. Harrell's personal account at the close of business January

25, 1926, was $186.29 (defendant's Exhibit 128, p. ....). Thus it is evident that if Mr. Harrell had not received the payment of the above $5,014.00 out of the transferred proceeds of the loan to Wichita Royalty Company which he made to G. W. Peckham, trustee, he could not have paid $5,006.67 on his private debt to the Bank. Very frequently bankers inquire the intended use of the proceeds of a fifteen or twenty thousand dollar loan (See Mr. Harrell's testimony).

The effect of the above, as indicated by the records, is this: Mr. Harrell, as an individual, had acquired and sold a valuable Property. As an executive officer of plaintiff Bank he had loaned the money with which it was bought. This loan was negotiated to the credit of the Royalty Company and title was conveyed to Messrs. Harrell and Basham to the trust. Mr. Peckham, as an individual, disposed of his personal interest in the Curlee land for a $1,000.00 profit; Mr. Peckham paid Mr. Harrell from transferred funds such an amount as to enable Mr. Harrell to pay the plaintiff bank upon his own indebtedness to the bank in the sum of $5,006.67. The bank thus received on the payment of J. T. Harrell's personal debt $4,827.71 of the proceeds of the loan which J. T. Harrell, for the Bank, made to G. W. Peckham for the Royalty Company.

1935

On February 2, 1926, Trust check #466 in the amount of $400.00 was deposited in Mr. Peckham's personal account (Carson's testimony, p.....). On the same day Mr. Peckham drew his check on the commingled account for $5,100.00 payable to Messrs. Harrell and Basham, $2,550.00 (or one-half) of which was deposited into Mr. Harrell's personal account (p. ....). $3,074.15 of the cash transferred from the Trust account was included in this $5100.00 payment.

On February 13, 1926, Mr. Peckham's personal liability was credited with $550.00 (defendant's exhibit 126, p. ....), and his commingled account was charged with $550.00 (plaintiff's exhibit 45, p. ....).

On February 27, 1926, Trust check 447 in the amount of $400.00 (Carson's testimony, p. . . .), was deposited into the personal account of Mr. Peckham.

On March 1, 1926, Mr. Peckham owed the plaintiff bank $28,050.00 plus interest (defendant's exhibit 126, p. . . .). The balance in his personal account at the beginning of business on March 1, 1926, was $341.90. On the same date Mr. Harrell owed the bank $7,060.00 (defendant's exhibit 127, p. . . .). Mr. W. H. Peckham on the same day was indebted to the plaintiff bank $6,120.00 (defendant's exhibit 130, p. . . .). Mr. W. H. Peckham was jointly liable with Mr. G. W. Peckham and Mr. Harrell in excess of $50,000.00 on the Marlborough partnership venture. On the same day the Wichita Royalty Company's note was executed and its liability account was charged with $25,500.00 (plaintiff's exhibit 104, p. . . .), $25,000.00 of which amount was deposited
1936 into the Trust account (defendant's exhibit 124, p . . . .). On the same day Mr. G. W. Peckham drew his check on the commingled account in the amount of $11,811.85 payable to Mr. W. H. Peckham, in payment of his interest in the Marlborough Addition (Carson's testimony, p. . . ., also plaintiff's exhibit 77, p. . . .). On the same day G. W. Peckham's personal balance was $341.90, which was insufficient to pay the check he had issued to W. H. Peckham in the amount of $11,811.85 (plaintiff's exhibit 45, p. . . .). This check was charged to the account of G. W. Peckham on March 9, 1926, 1926. Mr. G. W. Peckham's balance in the commingled account was $225.20, which consisted wholly of transferred funds. On the same day Trust Check No. 478 in the amount of $17,623.70 was issued payable to the plaintiff Bank (defendant's exhibit 111, p. . . .). A notation on the voucher is as follows: "To apply on purchase of 1/2 undivided interest on the Marlborough Addition, etc." This check was deposited on March 6, 1926, into G. W. Peckham's personal account which then consisted entirely of transferred funds. On the same day Mr. Peckham drew against his commingled account a check for $5,060.00,

payable to the order of Messrs. Harrell and Basham, one-half of which was deposited into Mr. Harrell's account, and the other half into Mr. Basham's account (Mr. Carson's testimony, p ....).

On March 9, 1926, upon G. W. Peckham's check on his commingled account, $11,871.85 was deposited into the personal account of W. H. Peckham (defendant's exhibit 129, p. ....). On the same day W. H. Peckham paid his entire indebtedness of $6,120.00 to the plaintiff bank (defendant's exhibit 130, p. ....). The Bank thus received $5,582.93 in payment of W. H. Peckham's debt out of the proceeds of the loan Harrell, for the Bank, made Wichita Royalty Company.

Very frequently banks and bankers inquire into the purpose of the loan and what is to be done with the proceeds. With respect to the loan of $25,000.00 on March 1, 1926, the records show: that it was negotiated between Mr. Harrell and Mr. G. W. Peckham; that Mr. Peckham was a joint maker of the note with the Wichita Royalty Company (See note in evidence) of which he was Trustee, that the proceeds of the loan were deposited to the Trust account; that $17,623.70 was transferred by Trust check #478 (the same date as the loan) to Mr. Peckham's account which then consisted of a balance of $225.20. From this commingled account, G. W. Peckham paid to Messrs. Harrell and Basham, $59,060.00 and paid Mr. W. H. Peckham $11,871.85 who then paid the Bank his entire obligation of $6,120.00. From the proceeds of the transferred funds, Messrs. Harrell and Basham received $5,060.00 and the plaintiff bank received $6,120.00 (Mr. Peckham's entire indebtedness).

1937

At the beginning of business on March 9, 1926, the balance in Mr. W. H. Peckham's personal account (defendant's exhibit 129, page ....) was $518.62. Had it not been for the sale of his interest in the Marlborough (which was paid for out of transferred funds from the proceeds of the above mentioned loan) Mr. W. H. Peckham would have been unable to pay his indebtedness to the Bank.

Marlborough.

Apparently this Marlborough loan of $25,000.00 was secured by G. W. Peckham, trustee, to take over and improve G. W. Peckham's held interest in Marlborough Addition, a fourth having been acquired by him several months before, and the remaining one-fourth having been acquired from his brother at a profit to his brother at the time the loan was negotiated. This conclusion is supported by the above facts and the following:

G. W. Peckham caused his trust books to show Wichita Royalty Company's acquisition of a half interest in Marlborough Addition for a total consideration of $49,566.20 (defendant's exhibit 111, p. ....). On April 10, 1926, G. W. Peckham executed a deed to his half interest in Marlborough Addition to Wichita Royalty Company, grantee. This deed he left in the office of Wichita Royalty Company with instructions that he would "continue to hold this property in my name" (defendant's exhibit 107, p. ....). He placed no revenue stamps on the deed. The deed was never recorded. Checks listed as Marlboro items are as follows:

1938

Date	Number	Amount	Payee	Disposition
3-16-26	478	$17,623.70	City Nat'l Bank.....	Deposited G. W. Peckham's a/c City National Bank
3-10-26	479	6,000.00	Security Nat'l Bank.	Deposited G. W. Peckham's a/c Security National Bank
3-31-26	485	7,500.00	City Nat'l Bank.....	Deposited G. W. Peckham's a/c City National Bank
5-20-26	503	3.000.00	G. W. Peckham.....	Deposited G. W. Peckham's a/c City National Bank
6- 2-26	507	1,500.00	City Nat'l Bank.....	Deposited G. W. Peckham's a/c City National Bank
6-16-26	510	4,500.00	City Nat'l Bank.....	Deposited G. W. Peckham's a/c City National Bank
7-15-26	519	1,000.00	City Nat'l Bank.....	Deposited G. W. Peckham's a/c City National Bank
8- 2-26	525	4,000.00	City Nat'l Bank.....	Deposited G. W. Peckham's a/c City National Bank
8-27-26	532	4,357.58	City Nat'l Bank.....	Deposited G. W. Peckham's a/c City National Bank
12-22-26	556	700.00	G. W. Peckhan	Cashed—G. W. Peckham, City National Bank
1- 4-27	556A	538.16	G. W. Peckham.....	Deposited G. W. Peckham's a/c City National Bank
1-19-27	571	2,000.00	City Nat'l Bank.....	Deposited G. W. Peckham's a/c City National Bank
2-19-27	579	2,500.00	Cit Jat'l Bank.....	Deposited G. W. Peckham's a/c City National Bank
5-13-30	908	500.00	Texas Investment Co. of Wichita Falls, Texas	Deposited to account of Texas Investment Company in City National Bank.
Total		$55,719.44		

Of the proceeds of the above transfer of trust funds to the commingled account of G. W. Peckham which he, as trustee, caused trust books to show to have been issued to apply for the purchase or improvement of Marlborough Addition, $1,499.71 was paid to the plaintiff bank upon G. W. Peckham's personal indebtedness, as elsewhere shown in schedules forming a part of this report.

1939 Property No. 71 Grimshaw.

On February 12, 1923, Grimshaw conveyed to G. W. Peckham a one-fourth mineral interest in B. R. I. R. No. 39, J. E. Dowdle Survey Abstract 2215, Young County, Texas, of record in Vol. 99, page 545 of the Deed Records of Young County. The Deed shows $8.00 of canceled revenue stamps indicating the purchase price to Grimshaw from Peckham to have been not to exceed $8,000.00.

Thereafter by escrow contract dated March 12, 1923, (Defendant's Exhibit 123) G. W. Peckham contracted with himself as trustee to sell Wichita Royalty Company a part of the interest which he had theretofore acquired from Grimshaw, the consideration recited in the contract being $2,500.00 cash, the receipt of which was acknowledged by the contract, $2,500.00 in thirty days and $2,500.00 in sixty days with 8% interest on deferred payments from March 12, 1923, until paid.

The $2,500.00 which G. W. Peckham acknowledged in the escrow contract to have theretofore received is evidenced by trust check No. 1253, dated March 10, 1923, paid March 10, 1923, payable to the order of City National Bank in the sum of $2,500.00, being Plaintiff's Exhibit 154, which was deposited to the account of B. L. Fain.

Thereafter and on March 12, 1923, G. W. Peckham acknowledged before E. A. Deaton, a mineral conveyance to a part of the interest which he had acquired from Grimshaw, the conveyance being to Wichita Royalty Company of 3/16ths of the minerals in the Grimshaw 160 acres and filed for record May 18, 1923, and recorded in

Volume 99, page 555, of the Deed Records of Young County, Texas.

Thereafter Wichita Royalty Company's check No. 1291 for $2,516.67 was issued April 9, 1923, payable to the order of G. W. Peckham and deposited to the account of G. W. Peckham on April 10, 1923 (Plaintiff's Exhibit 1940 155, Page ....).

Thereafter G. W. Peckham caused Wichita Royalty Company's check No. 1325 to issue on May 11, 1923, for $2,533.33 payable to the order of G. W. Peckham which was paid May 11, 1923, and on that date deposited to the personal account of G. W. Peckham. G. W. Peckham caused Wichita Royalty Company's books to reflect that the purpose for issuing checks 1253, 1291, and 1325 for the purchase of Property No. 71, Grimshaw.

Thereafter and by deed dated May 12, 1923, G. W. Peckham conveyed to Perpetual Royalty Syndicate for $2,500.00, his remaining 1/16 interest in that which he acquired under Grimshaw's deed to him.

It appears from the record that the Grimshaw property was producing minerals at the time G. W. Peckham acquired 1/4th interest thereon, February 12, 1923. It further appears that for the period from March 12, 1923, to April 30, 1923, G. W. Peckham continued to receive the proceeds of minerals accruing to the interest in that on May 16, 1923, he paid Wichita Royalty Company $234.05 and on May 28, 1923, $302.98 as that part of his receipts from a one-quarter of the minerals which accrued to the interest he had theretofore sold to Wichita Royalty Company.

Thus from G. W. Peckham's acquiring the interest on February 12, 1923, until he accounted to Wichita Royalty Company for oil runs from and after March 12, 1923, he retained the oil runs accruing to the interest. It further appears that he charged and received from the Royalty Company of which he was trustee, $50.00 as interest upon deferred payments under his contract with himself as trustee.

It further appears that Wichita Royalty Company received from this property $8,591.76 as the aggregate of oil runs received from May 12, 1923, to September
1941 30, 1936. It further appears from Defendant's Exhibit 38, Page ...., that beginning in March, 1923, and continuing throughout the period, there was a gradual decline in the amount of production accruing to this mineral interest. No effort has been made to compute interest upon the $7,550.00 which the Royalty Company paid its trustee for this interest. nor upon the periodical credits by reason of oil runs received. It is observed, however, that due to production in 1923 being manifold greater than the production in 1936, that to accrue interest upon $7,550.00 from the date of its payment and add thereto the $7,550.00 would substantially exceed the $8,591.70 received as oil runs plus interest accrued upon the periodical payment of oil runs.

The $2,516.87 transfer of funds from the trust account to the trustee's personal account was accomplished April 10, 1923, was at a time when G. W. Peckham's then balance was $766.25.

Thereafter and on May 11, 1923, at a time when $302.10 of the $2,516.67 deposit remained in the commingled account, a second check for $2,533.33 was deposited to G. W. Peckham's personal account and charged against the trust's deposit, making the account contain $2,836.43.

Thereafter, and on June 22, 1923, when the commingled account consisted of $428.85 of the $2,533.33 deposited and $2,683.34 of his personal funds, G. W. Peckham paid the plaintiff bank $3,050.60 upon his personal indebt-
1942 edness to the bank. $390.86 of the payment so made to the bank upon the personal indebtedness of G. W. Peckham was money belonging to the Wichita Royalty Company transferred to and commingled with G. W. Peckham's private funds.

1943 Property No. 75, Luke Wilson.

Trust Check No. 154, dated February 2, 1924, for $12,000.00 was deposited on February 2, 1924, in Peck-

ham's commingled account, and the bank proved that fact. (Plaintiff's Exhibit 159, pages ..... and .....) Trust check No. 185 dated March 17, 1924, payable to the order of G. W. Peckham for $9,250.00 was deposited in G. W. Peckham's commingled account on March 18, 1924, and the bank proved this fact. (Pages .... and .... and .... and Plaintiff's Exhibit 160.) G. W. Peckham, Trustee, in directing the issuance of trust check 154 caused the voucher notes to be made and trust records to show that proceeds of the $12,000.00 was to apply to the purchase of royalties in the State of Oklahoma. On March 17, 1924, when trust check 185 was issued the trustee changed the trust records to show that both checks 154 and 185 were to apply on the Wilson Royalty. (These vouchers to be offered in evidence and photostated.)

Between G. W. Peckham's receiving the $12,000.00 on February 2, 1924, and receiving the $9,250.00 on March 17, L. F. Wilson had conveyed to G. W. Peckham one-eighth royalty interest in Lots 13 and 14, Block 27, American Tribune New Colony Company Subdivision, Archer County, Texas (Defendant's Exhibit 39). For this interest G. W. Peckham paid to L. F. Wilson out of his commingled account $20,000.00 on March 7, 1924, and $80,000.00 on March 18, 1924. L. F. Wilson's account with plaintiff Bank was credited with proceeds of G. W. Peckham's $20,000.00 check on March 6, 1924. G. W. Peckham's balance with the bank at that time was $2,242.79, and was reduced to $1,917.74 before the $20,000.00 check cleared March 7, 1924, there having been deposited on March 7, 1924, the proceeds of two loans,
1944 one to G. W. Peckham, the other to W. H. Peckham, but both deposited to G. W. Peckham's personal account. (P. ....).

Thereafter on April 22, 1924, G. W. Peckham conveyed to Wichita Royalty Company one-eighth of the interest he acquired from Wilson, the consideration being $21,250.00 above and $6,250.00 payable in oil.

On various dates G. W. Peckham made sales, in each of which purchasers assumed the proportionate part of

the $50,000.00 payable in oil and the following cash payments:

		Cash Paid	Oil Obligation
1/2 or 64/128ths	Dr. Massie	$75,000.00	$25,000.00
3/32 or 12/128ths	United Royalty Co.	27,000.00	4,687.50
1/32 or 4/128ths	King Royalty Co.	8,500.00	1,562.50
2/32 or 8/128ths	R. A. King.....	20,000.00	3,125.00
6/32 or 24/128ths	Towola Royalty Co.	37,500.00	9,375.00
4/32 or 16/128ths	Wichita Royalty Co.	21,250.00	6,250.00
	Total	$189,250.00	$50,000.00

(See Carson's testimony, pp. .....)

This $168,000.00 cash received by Peckham from outside parties, plus the $21,250.00 received by him from Wichita Royalty Company, makes his cash receipts in the transaction $189,250.00 and accounts for his having conveyed all of the mineral interest which he bought for $100,000.00 cash. The plaintiff bank received $5,091.00 of the funds transferred from the Royalty Company's account to the commingled account.

Defendant's Exhibit 40, at Page ... of the record shows the oil income received by Wichita Royalty Company to be $19,226.04.

This property was sold on November 5, 1927, to Petroleum Royalty Company as evidenced by escrow contract (Defendant's Exhibit No. 16, Page ....). Total consideration was $6,000.00 (Page ....) and was paid as follows:

1945

12/ 5/27	Cash	$2,400.00
1/ 9/28	.....	1,208.00
1/25/28	.....	1,216.00
2/29/28	.....	1,224.00
		$6,048.00 (Which is $6,000.00 plus interest.)

Deposits in G. W. Peckham's personal account were made as follows:

12/ 5/27	.....	2,400.00
1/ 9/28	.....	1,200.00
1/25/28	.....	1,224.00
2/29/28	.....	1,224.00
		$6,048.00

The defendant's books do not reflect that any cash was received by them out of the sale of this property. P. .....

The net result from the ownership of this property was a loss of $2,023.96 as follows:

Cost	$21,250.00	Cash paid
Oil Income	19,226.04	Cash paid
Loss	$2,023.96	

On February 1, 1924, the balance in G. W. Peckham's commingled account was $975.92. On February 2, 1924, trust check #154 in the amount of $12,000.00 was deposited into G. W. Peckham's account. (Page .....). Subsequent payments reduced this balance to $2,593.62 on February 4, 1924, which consisted entirely of trust funds. On February 5, 1924, the City National Bank was paid $67.67 out of trust funds as interest on G. W. Peckham's personal note.

On March 18, 1924, trust check #185 in the amount of $5,250.00 was deposited into G. W. Peckham's commingled account; on the same day G. W. Peckham paid
1946 $10,026.75 on his personal indebtedness to the City National Bank. The balance in the account after making this payment was $3,749.09. It was therefore necessary to have used $5,500.91 trust funds with which to pay his personal indebtedness.

1947 Property No. 76, J. H. White.

This property was a lease, not a royalty or mineral interest. The records do not show a recorded assignment to Wichita Royalty Company. Plaintiff's Exhibit 165, shown at Page .... of the record, shows a sale of the entire 7/8ths leasehold interest to J. H. White for $15,000.00 on December 15, 1924. This assignment was executed by C. W. Murchison, E. R. Fain, B. L. Fain, Ross Robertson, J. I. Staley and A. W. Ross. Neither G. W. Peckham not Wichita Royalty Company is shown to have joined in or ratified the sale of this entire property.

The books and records of G. W. Peckham, Trustee, describe an interest in this property to be owned by Wichita Royalty Company. Plaintiff's Exhibit 161-162, being trust checks 246 and 237, the first dated July 24, 1924, and the second dated July 2, 1924, the first being for $10,000.00 and the second being for $11,000.00, were payable to the Security National Bank, cleared through the Wichita Falls Clearing House and paid by Plaintiff Bank. On the same dates these checks for $10,000.00 and $11,000.00 were charged against Wichita Royalty Company's account for like amounts (Page .... and the bank record of the two accountants), evidently the same money.

Wichita Royalty Company sustained a net loss of $15,739.72, as thus shown:

Receipts:

Oil Runs:	
10/22/24	$2,501.51
10/ 3/24	424.39
Sale of the Property by Peckham:	
1/27/25 (p. ....)	1,796.86
4/17/25 (p. ....)	538.04
	$5,260.80

Disbursements:

Ck. #237, July 2, 1924	$11,000.00
Ck. #246, July 24, 1924	10,000.00
Net Loss	$15,730.72

Note: Mr. Carson testified that the receipts came from B. L. Fain. It is noted that the sale deed by Fain and others (Page ....) to J. H. White acknowledges the receipt of $15,000.00 on December 15, 1924, the deed being filed for record December 18, 1924. Wichita Royalty Company was paid four months later.

1949 Property No. 78, Curtis Lane.

On December 12, 1924, G. W. Peckham's check to F. O. Harrell for $312.50 was paid.

On December 23, 1924, Trust Check #317 for $695.00 was deposited to Peckham's account. Between those dates and on December 16, 1924, F. O. Harrell conveyed to G. W. Peckham, trustee, the mineral interest which Peckham described in voucher notation #317. The books of F. O. Harrell show a $698.65 receipt from G. W. Peckham, $3.65 of which is shown to be gas income. Such books do not show the purpose of the $695.00 as paid by Peckham to F. O. Harrell on November 14, 1924.

The ownership of this property resulted in a net loss as follows:

Cost		$695.00
Income	$38.25	
Refund of Commission	31.25	69.50
Net Loss		$626.50

1950 Property No. 79, Routon.

The record at page ...., Plaintiff's Exhibit 171, shows voucher check No. 373, dated May 5, 1925, payable to G. W. Peckham's order, for $2,500.00, to have been issued "to purchase 1/16 of the royalty in the Routon land, 117 acres, Archer County, Texas, $2,500.00." This check was deposited to G. W. Peckham's account and of the proceeds of such transfer the bank received $1,386.92.

The bank, through the testimony of Mr. Carson (page ....) seeks to account for G. W. Peckham expending $2,500.00 on the same day he received the trust deposit. His check (Plaintiff's Exhibit 173, page ....) shows upon its margin to have been issued for "1/12" int. in deal with Allen, Mooers Routon land," being payable to the order of Ray & Massie and indorsed for deposit to their credit. It is thought the bank is mistaken in seeking to show that this check was issued for the interest which G. W. Peckham is supposed to have acquired for his trust in that his check was for a leasehold interest and not a royalty interest. Investigation has disclosed these facts:

J. B. Routon executed an oil and gas lease on 100 acres of the Holman survey, the lease being dated March 22, 1924, and recorded in Volume 75, page 489, of the Deed Records of Archer County, Texas, the lessee being J. H. James, who assigned to R. S. Allen and J. C. Strauss an undivided interest therein by correction assignment dated October 20, 1925, of record in Vol. 106, page 640, of the Deed Records of Archer County, Texas; that Allen, Mooers and Strauss assigned an eighth carried interest in said oil and gas lease to Ray & Massie by

1951 assignment dated May 2, 1925, of 21 record in Vol. 99 page 579, of the Deed Records of Archer County, Texas (these instruments are to be offered in evidence).

Ray & Massie paid Allen, Mooers and Strauss $30,000.00 for this lease assignment. The title was carried

in the name of Ray & Massie, who rendered an account to the parties at interest showing the cost of the drilling of the dry hole. (to be offered in evidence.)

Plaintiff's Exhibit 173, being G. W. Peckham's $2,500.00 check to Ray & Massie, was deposited to the account of Ray & Massie on May 25, 1925, and shows to be for a 1/12th interest in the Routon lease. On June 27, 1925, George Peckham paid Ray & Massie $492.90 for his 1/12th of the expense incident to drilling the dry hole (copy to be offered in evidence). He paid his final balance for his part of the expense of drilling the well on September 24, 1925 (a copy of which deposit to be offered in evidence).

Thus it would appear that plaintiff's Exhibit 173 was for G. W. Peckham's personal interest in the drilling of an oil well and his interest in the leasehold estate upon which it was drilled.

Aside from the leasehold interest, Ray & Massie acquired from J. B. Routon and wife a one-fourth mineral interest in 117 acres of the Holman survey by deed dated May 1, 1925, recorded in Vol. 99, page 624, of the Deed Records of Archer County, Texas, conveying 1/16 to Wichita Royalty Company. The trust received $419.23 7-1-25 to 11-30-30, as proceeds of oil runs.

1952 Property No. 81, Callahan County.

On October 8, 1925, Peckham deposited to his personal account trust check 427 for $5,500.00. He caused notation to show that $2,500.00 of the $5,500.00 was for a royalty interest in Callahan County.

A mineral deed with the grantee's name in blank dated on the 14th day of October, 1925, was attached to a draft drawn on G. W. Peckham for $2,250.00 which

G. W. Peckham paid by check dated October 17, 1925, and charged against his personal account. On October 19, 1925, the trustee filled in the blank provided for the grantee's name inserting therein the name of Wichita Royalty Company and filing the instrument for record. (See photostatic copy, P. ....).

It now appears from testimony of Mr. Carson, ..., in connection with trust check No. 438, that Wichita Royalty Company was charged with $2,500.00 for this property paid to G. W. Peckham. There was no income fro n the property resulting in a net loss to the Wichita Royalty Company.

The bank's witness, C. A. Rogers, testified that this property was condemned. He did not testify whether it was condemned before draft paid or not.

1953 Property No. 83, Porter Ranch.

On December 1, 1925, W. L. and S. J. Porter conveyed 1007 acres to W. T. Knight, G. W. Peckham, J. T. Harrell and others for a total consideration of $32,100.00 in cash and notes. (Plaintiff's Exhibit 60. Pages .....) The deed recites that G. W. Peckham owned an undivided one-eighth interest at a cost of $4,012.50 cash and notes.

There was never a conveyance from any of the grantees in the deed or from G. W. Peckham to Wichita Royalty Company of an interest in this land.

G. W. Peckham, trustee, after paying $1,250.00 of his own funds as his part of the cash consideration for the deed caused the following trust checks to be issued showing their purpose to be the Porter Ranch Land.

#451 12/28/25 payable First National Bank for $1,250.00
#554 12/ 2/26 payable First National Bank for 1,141.82
#778 11/26/27 payable to G. W. Peckham for... 21.63
#670 12/20/27 payable to G. W. Peckham for... 147.33

$2,560.78

The amount of these checks was transferred from the trust fund to Peckham's personal account.

Thereafter the substitute trustee paid to W. T Knight $187.24, trust checks 857 and 970 applied upon the debts of the Porter land partnership.

Wichita Royalty Company received on July 26, 1926 $111.67 and on July 29, 1929, $115.81.

This property was foreclosed and sold at sheriff's sale. The excess expenditures over receipts is $2,520.54.

1954 Property No. 93, Ellis Co., Okla.

On October 8, 1926, G. W. Peckham assigned to the Wichita Royalty Company an oil and gas assignment to 80 acres in Ellis County, Oklahoma, as evidenced by Plaintiff's Exhibit 99, Page ..... The royalty to this property was also conveyed. Page .....

The cost to the Wichita Royalty for this property was $160.00 as evidenced by the following:

Reference is made to voucher record of Wichita Royalty Company, Page ....., check 554 for $1,500.00, December 2, 1926, of which $160.00 was for this property.

This property resulted in a net loss of $160.00 to the Wichita Royalty Company.

1955 Property No. 94, Hartley County.

J. M. Perkins conveyed to G. W. Peckham a mineral interest in Section 54, Hartley County, by deed dated August 7, 1926. Later Perkins drew a draft upon G. W. Peckham for $1,920.00 with deed attached. This mineral estate terminated under the terms of the deed (Plaintiff's Exhibit 42) in five years from August 7, 1926.

On December 15, 1926, G. W. Peckham, trustee, took up the draft drawn on him with trust check No. 557, for $1,920.00. The same day he acknowledged a deed to Wichita Royalty for the interest, dating his deed to his trust the same date of Perkins' deed to him and recording both instruments.

This property produced no income and terminated under its own terms, five years from August 7, 1926.

1956 Property No. 95, Anderson.

This property was purported to be an undivided 3/16 interest in an oil and gas lease on 80 acres of Lot #10, North Anderson Ranch Lands, Archer County, Texas.

Testimony introduced by the defendant shows that the Wichita Royalty Company did not receive title to this lease (Pages .... and ....). Plaintiff also testified that title did not pass to G. W. Peckham nor from Peckham to the Wichita Royalty Company, not from F. O. Harrell to the Wichita Royalty Company (Pages ..... and ....). No title is shown to this except in a third party.

The total charge to the Wichita Royalty Company was $5,000.00 as evidenced by the following:

$5,000.00 out of check #550 (in the total amount of $7,500.00) dated November 20, 1926 to the order of

City National Bank (Page .....). This check was deposited into the personal account of G. W. Peckham in the City National Bank on November 20, 1926 (Page .... and Plaintiff's Exhibit 93, page ....). It appears that Wichita Royalty Company received nothing for this $5,000.00.

This transaction resulted in a net loss of $5,000.00. Defendant testified that the Wichita Royalty Company never received anything from the money spent (Page ....). I find nothing to the contrary.

1957 Property No. 96, Polk.

On October 9, 1926, E. Polk and wife conveyed to F. O. Harrell et al, an undivided one-half mineral interest in and to sixty acres of the E. Polk land, Abstract 171, Archer County, Texas, as evidenced by Page ..... This was not subsequently conveyed either to G. W. Peckham or Wichita Royalty Company, Page .....

The total cost to the Wichita Royalty Company was $3,000.00 as evidenced by the following:

$2,500.00 out of Check #550 (in the total amount of $7,500.00) dated November 20, 1926 to the order of City National Bank, Page ..... This check was deposited into the personal account Page ...., Plaintiff's Exhibit 93, Page .....

$198.18 out of Check #554 (in the total amount of $1,500.00) dated December 2, 1926, to the order of City National Bank, page ..... This check was deposited into the personal account of G. W. Peckham in the City National Bank on December 2, 1926 Page ...., and Plaintiff's Exhibit 94, Page ....

Check #583, dated March 1, 1927, to the order of City National Bank in the amount of $301.82, Page .....

This check was deposited into the personal account of G. W. Peckham in the City National Bank on March 16, 1927, Page ...., and Plaintiff's Exhibit 95, Page .....

These transactions resulted in a net loss of $3,000.00. No testimony was introduced showing any income from this property.

Upon check #550, $7,500.00 was transferred to the commingled account, from which account G. W. Peckham gave the bank two checks, one for $8,008.00 and
1958 the other for $4,904.90, to take up drafts drawn on G. W. Peckham with leases to him attached, being from Shamrock, Texas, First National Bank, this paying on his personal debt out of the $7,500.00 transferred $6,162.25 upon checks payable to the plaintiff Bank.

The Bank received $220.58 of the $301.82 transferred upon check #583 in payment of Peckham's personal debt.

1959 Property No. 97, Milner Oil Payment.

On April 15, 1927, B. L. Fain assigned to the Wichita Royalty Company his interest in an oil payment of face value of $4,200.00 as evidenced by Defendant's Exhibit 44, Page .....

The cost to the Wichita Royalty Company was $3,000.00 as evidenced by the following:

Plaintiff's Exhibit 184, check 602, dated April 22, 1927, to the order of B. L. Fain in the amount of $1,000.00, Page ..... This check was deposited into the personal account of G. W. Peckham in the City National Bank on April 23, 1927, page ....

Plaintiff's Exhibit 185, check #607, dated May 6, 1927, to the order of B. L. Fain in the amount of $500.00, Page ..... This check was deposited into the personal account of G. W. Peckham in the City National Bank on May 6, 1927, Page ..

Plaintiff's Exhibit 186, check #610, dated May 16, 1927, to the order of B. L. Fain in the amount of $1,000.00, Page ..... This check was deposited into the personal account of G. W. Peckham in the City National Bank on May 16, 1927, Page .....

Plaintiff's Exhibit 187, check #598, dated April 11, 1927, to the order of B. L. Fain in the amount of $500.00, Page ..... This check was cleared through the Security National Bank and bears the genuine indorsement of B. L. Fain, Page .....

The bank received $10.00 of the May 6, 1927 transfer of $500.00. This paid G. W. Peckham's indebtedness to the bank for safety box rent.

1960 The ownership of this property resulted in a net loss of $2,602.15 as follows:

Cost	$3,000.00
Income	397.85
Net Loss	$2,602.15

Defendant's Exhibit 67 shows the income from this property, Page ....

None of above checks except #598, bears the genuine indorsement of B. L. Fain. Apparently, G. W. Peckham indorsed payee's name and deposited them to his own personal account.

1961 The Witness:

I do not recall having seen in the first twelve volumes of the testimony, the sale of G. W. Peckham of his interest in the Stephens Royalty which he acquired in November. Defendant's Exhibit 186, relates to and explains many of the items that are set out in accounting form in Defendant's Exhibit 187. I made this report in two volumes, because it would be easier to handle, putting single sheets in one volume and double folded sheets in the other volume, the second volume being strictly tabulated typewritten matter dealing with the bank transactions, they are inter-related, and are inseparable, except physically.

Defendant's Exhibit 187 is a typewritten report consisting of forty-three pages of typewritten matter and the index. This report has four main divisions, and a recapitulation sheet, being page ..... Now, the first section of this report, from pages ....to...., inclusive, is an analysis of the trust funds deposited by G. W. Peckham in his commingled account in the City National Bank. On this schedule I have tried to show the date paid. By that I am trying to use the cancellation date, the trust voucher number, the payee, explanation, and showing what information I had or that was advisable, showing the check number. In some instances I have copied the Wichita Royalty Company's checks and vouchers in detail, and in some instances referred to them. I had the vouchers before me in making this report. I extended this into two columns, one debit and one credit. The debit column has the amount that we were charging the bank with, on repudiated properties and any other disputed items. The credit column

1962 is the amount on which I give credit. The last column to the right is known as page No. .... on that page number you will find Mr. Carson's testimony, who identifies these items, and also states their disposition. In most instances these items were deposited in the commingled account of Mr. Peckham—I think every one of them. Then on pages .... and ...,

there is a similiar schedule, with the exception that these items were not deposited in the City National Bank, but in most instances were cashed by Mr. Peckham and in two or three instances I think were deposited in the Security National Bank. Checks Nos. 237 and 246, totaling $21,000.00, those items were not deposited as such in the Plaintiff bank. They were made payable to the Security National Bank, and we were unable to find where those specific checks were deposited directly into the City National Bank. The grand total of the first ten pages net in the debit balance is $110,225.88, which amount has been carried forward on Mr. Peckham's account and added thereto are the various checks included in the report, making a grand total of $139,341.24. I have not attempted to compute any interest. In fact, there is a foot note on page ...., which reads as follows: "The above account is subject to certain changes of debits and credits as the Court may determine, including the computation of interest." On page ...., is a recapitulation of payments to the City National Bank of trust funds on G. W. Peckham's personal debts out of the commingled account. These items total $10,713.84, and is in the amount, as I

1963

determined, of the various penetrations at various times, being fifteen in number, by penetrations, I mean the extent to which it was necessary to go into trust funds in order to pay the bank out of the account against which it was drawn. The first column is the date, by that I mean the date on which a definite payment was made to the City National Bank on Mr. Peckham's personal indebtedness out of the commingled account. The second column, as to the amount, is the extent to which it was necessary to draw upon trust funds to make this payment. The third column which I headed "source," is the trust check number which had been deposited and out of which this amount or amounts were paid. These trust checks were all offered in evidence or have been offered in evidence, and all examined by you.

Following page ...., is a series of analysis running from pages .... to ...., inclusive, six separate schedules on these pages. I will give a general description and say that I started with the date of the trust checks deposits, and carried the account on through to a point at which this penetration of payments was made, to the bank. It was made subsequent, of course, to this trust check deposit, would be any deposits of items that entered into the personal account of Mr. Peckham. By that I mean his personal account, showing the deposit of checks right on through to the end of each schedule. I have used in this computation Mr. Peckham's personal funds for his personal debts as long as it would last, and then when his personal funds
1964 gave out, I charged it against the trust funds. When I would have a deposit there of his own funds, we did not include that in his personal funds, we would increase the amount of personal funds on a given day, he had in his account. He would not increase the amount of trust funds which I say he had to his account on any day by any deposit that did not come from the Royalty Company.

On page ..., is a penetration involved only one day, I have the beginning of the balance on January 19, 1927. The balance in Mr. Peckham's commingled account at the beginning of business January 19, 1927, was $1,581.44, all of which I showed to be personal funds. On the same day trust check No. 571, payable to the City National Bank in the amount of $2,000.00 was deposited, making a total balance of $3,581.41. I schedule the $1,581.41 of the commingled account as personal funds and the $2,000.00 as trust funds. On the same day G. W. Peckham paid on his personal note, No. 87,506, $2,500.00 principal and $6.12 interest, a total of $2,506.12. Also on the same day he paid Mrs. H. H. Brown $25.00. The total payment as represented by these two checks were $2,531.12. Whereas, he had only $1,581.41 of his personal funds with which he paid these checks, making it necessary to use $949.71 of the above mentioned

trust check No. 571, in the amount of $2,000.00 to pay these two checks, leaving a balance in the account at the close of these two items, of $1,050.29. That is the manner in which I handled each of these payments.

When a transfer of funds from Wichita Roy-
1965 alty Company account is shown on a schedule, I include the transferred funds from the royalty company under the question of deposit trust funds, which is the right hand division of this column. It is divided into three main divisions, first his personal funds, and the first division is trust funds and the third division is commingled balance or total of balance in the account. In the extreme right hand column I carry forward from time to time, during the respective periods of time covered, the balance of the account of G. W. Peckham. I have reconciled those balances with the bank records. When he gives a check, if it is a personal check, I charge it in the first division under personal funds, as long as there is funds, and deduct it from the balance shown as a balance in his personal funds as long as it lasts. I consider it checks drawn upon the trust funds and reduce the trust funds balance as long as any money was left, or until he replaces or replenishes his personal fund with a personal deposit, then I start the procedure over again, and apply his personal checks to his personal deposits as long as he has any money. As a result of that, I find, as shown on page .... of my record, the bank received transferred funds in payment of G. W. Peckham's personal debt to the bank, fifteen analysis of different dates, totaling $10,713.00. The next group is on pages ... and ..., showing an analysis of payments of the Stephens Royalty to J. T. Harrell, C. E. Basham, during the period of January 1, 1926 to February 2, 1926. That is an analysis of the commingled account from Janu-
1966 ary 1, to February 2, 1926. Following the same procedure I have outlined above, included in this schedule is four transfers of trust funds, being trust check No. 452, on January 4, amounting to $5,000.00;

trust check No. 458, January 11, $5,000.00; Trust check No. 461, dated January 18, 1926, $15,769.07; trust check No. 466, February 21, 1926, $400.00. In addition to these trust deposits, there were six personal deposits. I might as well list those items; January 9, 1926, $100.00; January 13, 1926, $931.88, being the oil runs on the Stephens. January 13, 1926, $931.88, with a notation, "Vernon oil runs," which I think is the same property, it is referred to in two different names. Two more deposits on January 30, in the amount of $1,411.16, an another on the same date, the notation says, "J. T. H. Dale Oil Refining Company, $1,235.99," and the last item, Page ..., $1,000.00. Those items show to be personal funds. All checks that were issued during that period of time are shown in detail as to date, payee and amount, and I had charged these checks to the personal funds so long as there was a balance in his personal account, then I applied the excess to the trust funds. During that period of time I show that there was paid by Mr. Peckham the following amounts: January 5, Highland Irrigation Company, $812.00; January 12, Highland Irrigation Company, $454.50; January 16, J. T. Harrell and C. E. Basham, $2,201.32; January 25, J. T. Harrell, C. E. Basham, $10,028.00; February 2, 1926, J. T. Harrell, C. E. Basham, $5,100.00. That last check was paid
1967 in part out of the trust funds to the extent of $3,074.15. I follow the same method of computation as I had in all these other schedules.

The next group is two schedules on pages ... and ..., which are analysis, penetration on May 4, 1926, and August 10, 1926, respectively. Page ... is another main heading which I failed to include in my first explanation. It is an analysis on payments, on purchases of the Blummer and the Webb leases out of trust funds through the City National Bank. These items were handled as collection items through the City National Bank for the First National Bank at Shamrock. Two drafts in the amount of $8,008.00 and $4,904.90, these checks were payable to the City National Bank. The

next series of pages from ... to ... is a series of seven penetrations. On these respectives of January 19, 1927, March 16, 1927, May 9, 1927, October 19, 1927, February 15, 1928, September 27, 1928, January 12, 1929, following the same procedure as previously.

The next six pages, Nos. ... to ..., is an analysis of the payment of trust funds on the Marlborough indebtedness during the period of March 6, 1926, to July 23, 1926, the same method followed.

Those schedules that I have detailed here are referred to in my Defendant's Exhibit 186, and support certain statements which I there make. I have endeavored to correctly, and have correctly tabulated in Defendant's Exhibit 187 the matters therein con-
1968 tained, and I think they are correct.

Mr. Rogers:

We offer in evidence Defendant's Exhibit No. 187.

(Marked "DEFENDANT'S EXHIBIT 187" and reading as follows:)

INDEX.

Analysis of Trust Funds deposited by G. W. Peckham in his commingled account in the City National Bank.
Analysis of Trust Funds Paid to G. W. Peckham not Deposited in the City National Bank.
Recapitulation of Trust Funds paid to the City National Bank by G. W. Peckham on his Personal Indebtedness out of the Commingled Account.
Analysis of the Penetration on June 22, 1923.
Analysis of the Penetration on October 16, 1923.
Analysis of the Penetration on February 5, 1924.
Analysis of the Penetration on March 18, 1924.
Analysis of the Penetration on May 12, 1925.
Analysis of the Penetration on June 11, 1925.
Analysis of Payments on the Stephens Royalty to J. T. Harrell and C. E. Basham during Period of January 1, 1926 to February 2, 1926.
Analysis of the Penetration on May 4, 1926.
Analysis of the Penetration on August 10, 1926.
Analysis of Payments on Purchase of the Plummer and Webb Leases out of Trust Funds through the City National Bank.
Analysis of the Penetration on January 19, 1927.
Analysis of the Penetration on March 16, 1927.
Analysis of the Penetration on May 9, 1927.
Analysis of the Penetration on October 19, 1927.
Analysis of the Penetration on February 15, 1928.
Analysis of the Penetration on September 27, 1928.
Analysis of the Penetration on January 12, 1929.
Analysis of Payment of Trust Funds on the Marlborough Indebtedness during the period of March 6, 1926 to July 23, 1926.

Wichita Royalty Company in Account With City National Bank of Wichita Falls, Texas.

Period of April 10, 1923 to November 1, 1929.

Date Paid 1923	Trust Voucher No.	Payee	Explanation	Debit	Credit	Page No.
4-10	1291	G. W. Peckham	Transfer of Trust Funds (Royalty #71, Grimshaw)	$2,516.67		317
		Oil Runs received by the Trust	(Royalty #71, Grimshaw from 3-12-23 to 9-30-36)		$8,591.76	
5- 8	1310	G. W. Peckham	Transfer of Trust Funds (Salary)...	500.00		316
5- 8	1322	Geo. W. Peckham	Transfer of Trust Funds (Traveling Expense)	400.00		317
5-11	1325	Geo. W. Peckham	Transfer of Trust Funds (Royalty #71, Grimshaw)	2,533.00		317
5-16		Wichita Royalty Co. ...	(Check of G. W. Peckham for oil runs on Royalty #71 Grimshaw, 3/12-31 included in oil run total shown above)	234.05	234.05	
5-28		Wichita Royalty Co. ..	(Check of G. W. Peckham for oil runs on Royalty #71 Grimshaw—April runs by Humble included in oil run total above)	302.98	302.98	

1684

8- 3	34	G. W. Peckham	Transfer of Trust Funds (Salary)...	500.00		318
9- 1	54	G. W. Peckham	Transfer of Trust Funds (Salary)...	500.00		321
10-16	73	G. W. Peckham	Transfer of Trust Funds (Salary)...	500.00		321
11- 1	92	G. W. Peckham	Transfer of Trust Funds (Salary)...	500.00		322
12-24	134	G. W. Peckham	Transfer of Trust Funds (Salary)...	500.00		324
1924						
1-19	147	City Nat'l Bank	Transfer of Trust Funds (Returned to the Trust on 2-2-1924)	5,000.00		324
1-31	149	Geo. W. Peckham	Transfer of Trust Funds (Salary)...	500.00		325
2- 2	154	B. L. Fain	Transfer of Trust Funds (Payee's name indorsed and deposited into G. W. Peckham's account—Royalty #75 Luke Wilson).....	12,000.00		325
		Oil Runs received by the Trust	Detail (Royalty #75 Luke Wilson from 3/1/24 to 11-30-27 the effective date of the Sale) $25,476.04			
			Less oil payment which the Trust did not receive.. 6,250.00		19,226.04	
2- 2		Wichita Royalty Co. ...	(Return of $5,000.00 received on Trust check #147)		5,000.00	

Date Paid	Trust Voucher No.	Payee	Explanation	Debit	Credit	Page No.
2-11	160	G. W. Peckham	(Transfer of Trust Funds) Refunded to Trust on 2-16-24 C. R. M. #58			
2-16			Refund of cash transferred by check #160 as shown by C. R. M. #58	2,500.00		329
2-29	169	G. W. Peckham	(Studebaker Car)		2,500.00	
9-30-36			Sale Price of Studebaker Car C. R. M. #178	1,200.00		329
1924					555.00	
3- 4	171	G. W. Peckham	Transfer of Trust Funds (Salary)	500.00		329
3-18	185	G. W. Peckham	Transfer of Trust Funds (Royalty #75, Luke Wilson)	9,250.00		330
3-29	188	G. W. Peckham	Transfer of Trust Funds (Salary)	500.00		330
4-16		Wichita Royalty Co.	Check of G. W. Peckham (Oil runs from Royalty #75—Luke Wilson included in above total)	184.54	184.54	
4-16		Wichita Royalty Co.	Check of G. W. Peckham (Oil runs on Royalty #75—Luke Wilson included in above total)	141.38	141.38	
4-16		Wichita Royalty Co.	Check of G. W. Peckham (Oil runs on Royalty #75—Luke Wilson included in above total)	525.07	525.07	

4-29		Wichita Royalty Co.	Check of G. W. Peckham (Oil runs on Royalty #75—Luke Wilson included in above total)	275.55	275.55	
5- 1	205	G. W. Peckham	Transfer of Trust Funds (Salary)	500.00		330
5- 7		Wichita Royalty Co.	Check of G. W. Peckham (Oil runs on Royalty #75—Luke Wilson included in above total)	480.04	480.04	
5- 7		Wichita Royalty Co.	Check of G. W. Peckham (Oil runs on Royalty #75—Luke Wilson included in above total)	206.58	206.58	
5-15		Wichita Royalty Co.	Check of G. W. Peckham (Oil runs on Royalty #75—Luke Wilson included in above total)	182.44	182.44	
5-27		Wichita Royalty Co.	Check of G. W. Peckham (Oil runs on Royalty #75—Luke Wilson included in above total)	538.30	538.30	
6- 3		Wichita Royalty Co.	Check of G. W. Peckham (Oil runs on Royalty #75—Luke Wilson included in above total)	138.75	138.75	
6-14		Wichita Royalty Co.	Check of G. W. Peckham (Oil runs on Royalty #75—Luke Wilson included in above total)	74.63	74.63	
6-28	232	G. W. Peckham	Transfer of Trust Funds (Salary)	500.00		331

Date Paid	Trust Voucher No.	Payee	Explanation	Debit	Credit	Page No.
7- 9		Wichita Royalty Co.	Check of G. W. Peckham (Oil runs on Royalty #75—Luke Wilson included in above total)	135.42	135.42	
7-18		Wichita Royalty Co.	Check of G. W. Peckham (Oil runs on Royalty #75—Luke Wilson included in above total)	55.64	55.64	
8- 1	247	G. W. Peckham	Transfer of Funds (Salary)	500.00		331
8- 7		Wichita Royalty Co.	Check of G. W. Peckham (Oil runs on Royalty #75—Luke Wilson included in above total)	35.78	35.78	
8- 7		Wichita Royalty Co.	Check of G. W. Peckham (Oil runs on Royalty #75—Luke Wilson included in above total)	40.04	40.04	
9- 9		Wichita Royalty Co.	Check of G. W. Peckham (Oil runs on Royalty #75—Luke Wilson included in above total)	34.75	34.75	
9- 9		Wichita Royalty Co.	Check of G. W. Peckham (Oil runs on Royalty #75—Luke Wilson included in above total)	751.41	751.41	
9- 9		Wichita Royalty Co.	Check of G. W. Peckham (Oil runs on Royalty #75—Luke Wilson included in above total)	52.83	52.83	

10-18	272	G. W. Peckham	Transfer of Trust Funds (Salary)...	500.00		332
10-20		Wichita Royalty Co. ..	Check of G. W. Peckham (Oil runs on Royalty #75—Luke Wilson included in above total)	54.37	54.37	
10-20		Wichita Royalty Co. ...	Check of G. W. Peckham (Oil runs on Royalty #75—Luke Wilson included in above total)	45.00	45.00	
10-20		Wichita Royalty Co ...	Check of G. W. Peckham (Oil runs on Royalty #75—Luke Wilson included in above total)	47.36	47.36	
10-31	286	G. W. Peckham	Transfer of Trust Funds (Salary)...	500.00		332
11- 8		Wichita Royalty Co. ...	Check of G. W. Peckham (Oil runs on Royalty #75—Luke Wilson included in above total)	39.05	39.05	
11-13		Wichita Royalty Co.....	Check of G. W. Peckham (Oil runs on Royalty #75—Luke Wilson included in above total)	47.08	47.08	
11-29	304	G. W. Peckham	Transfer of Trust Funds (Salary)...	500.00		333
11-29		Wichita Royalty Co. ...	Check of G. W. Peckham (Oil runs on Royalty #75—Luke Wilson included in above total)	36.03	36.03	
12-10		Wichita Royalty Co. ...	Check of G. W. Peckham (Oil runs on Royalty #75—Luke Wilson included in above total)	197.83	197.83	

Date Paid	Trust Voucher No.	Payee	Explanation	Debit	Credit	Page No.
12-16		Wichita Royalty Co.	Check of G. W. Peckham (Oil runs on Royalty #75—Luke Wilson included in above total)	33.23	33.23	
12-23	317	G. W. Peckham	Transfer of Trust Funds (Royalty #78—Curtis Lane)	695.00		333
		Oil Runs received by the Trust	(Royalty #78—Curtis Lane Jan. 16, 1925, to Nov. 25, 1926)		38.25	
1925						
1- 3	320	G. W. Peckham	Transfer of Trust Funds (Salary)	500.00		333
1-10		Wichita Royalty Co.	Check of G. W. Peckham (Oil runs on Royalty #75—Luke Wilson included in above total)	34.66	34.66	
1-16		Wichita Royalty Co.	Check of G. W. Peckham (Oil runs on Royalty #75—Luke Wilson included in above total)	52.27	52.27	
1-16		Wichita Royalty Co.	Check of G. W. Peckham (Oil runs on Royalty #75—Luke Wilson included in above total)	31.04	31.04	
2- 5	338	G. W. Peckham	Transfer of Trust Funds (Salary)	400.00		335
2-11		Wichita Royalty Co.	Check of G. W. Peckham (Refund on commission)		31.25	

3- 5	347	G. W. Peckham	Transfer of Trust Funds (Salary)...	400.00		335
4- 2	357	G. W. Peckham	Transfer of Trust Funds (Salary)...	400.00		335
5- 2	370	G. W. Peckham	Transfer of Trust Funds (Salary)...	400.00		336
5- 5	373	G. W. Peckham	Transfer of Trust Funds (Royalty #79—Routan)	2,500.00		336
		Oil Runs received by the Trust	(Royalty #79—Routan July 1, 1925, to Nov. 30, 1930)		419.23	
6- 2	378	G. W. Peckham	Transfer of Trust Funds (Salary)...	400.00		378
6-24	385	G. W. Peckham	Transfer of Trust Funds (Royalty #80—Anderson)	6,000.00		385
		Oil Runs received by the Trust	(Royalty #80—Anderson, July 18, 1925, to Mch. 31, 1936).....		10,174.51	
6-29	387	G. W. Peckham	Transfer of Trust Funds (Royalty #80—Anderson)	5,000.00		339
7- 7	388	G. W. Peckham	Transfer of Trust Funds (Salary)...	400.00		339
8- 3	400	G. W. Peckham	Transfer of Trust Funds (Salary)...	400.00		339
9-10	411	G. W. Peckham	Transfer of Trust Funds (Salary)...	400.00		340
9-30	422	G. W. Peckham	Transfer of Trust Funds (Salary)...	400.00		340
10- 8	427	City National Bank....	Transfer of Trust Funds (Royalty #81—Callahan)	2,500.00		340

Date Paid	Trust Voucher No.	Payee	Explanation	Debit	Credit	Page No.
		Oil Runs received by the Trust	(Royalty #81—Callahan)		None	
10- 8	427		Transfer of Trust Funds (Refunded to Trust on November 10, 1925).	1,500.00		340
11- 2	433	G. W. Peckham	Transfer of Trust Funds (Salary)	400.00		341
11-10		Wichita Royalty Co.	Check of G. W. Peckham (Refund in part of funds transferred on Trust Ck. #427)		1,500.00	
12- 3	444	G. W. Peckham	Transfer of Trust Funds (Salary)	400.00		341
12-28	451	City National Bank	Transfer of Trust Funds (Royalty #83—Porter Ranch)	1,250.00		341
		Oil Runs received by the Trust	(Royalty #83—Porter Ranch)		None	
		Gross Rentals received by the Trust	(Check of G. W. Peckham dated 7-27-26)		111.67	
12-31 1926	453	G. W. Peckham	(C. R. M. #208, dated July 29, 1927) Transfer of Trust Funds (Salary)	400.00	115.81	342
1- 4	452	G. W. Peckham	Transfer of Trust Funds (Royalty #84—Stephens)	5,000.00		342

		Oil Runs received by the Trust	Royalty #84—Stephens from January 1, 1926, to April 1, 1930, the effective date of the sale)		21,527.30	
4- 1-1930		Humble Oil & Refining Company	(C. R. M. #279)		500.00	
4- 1-1930		Barkley & Meadows	(Cash $125.00 and Notes $2,750.00 J. E. #13 and 14)		2,875.00	
1926						
1-11	458	City National Bank	Transfer of Trust Funds (Royalty #84—Stephens)	5,000.00		342
1-18	461	City National Bank	Transfer of Trust Funds (Royalty #84—Stephens)	15,769.07		342
2- 2	466	G. W. Peckham	Transfer of Trust Funds (Salary)	400.00		343
2-10		Wichita Royalty Co.	Check of G. W. Peckham (Oil runs on Royalty #84—Stephens included in above total)	1,235.99	1,235.99	
2-24		Wichita Royalty Co.	Check of G. W. Peckham (Oil runs on Royalty #84—Stephens included in above total)	1,103.13	1,103.13	
2-27	477	G. W. Peckham	Transfer of Trust Funds (Salary)	400.00		343
3- 6	478	City National Bank	Transfer of Trust Funds (Marlborough)	17,623.70		343
3-31	485	City National Bank	Transfer of Trust Funds (Marlborough)	7,500.00		343

Date Paid	Trust Voucher No.	Payee	Explanation	Debit	Credit	Page No.
4- 3	487	G W. Peckham	Transfer of Trust Funds (Salary)	400.00		344
5-20	503	G. W. Peckham	Transfer of Trust Funds (Marlborough)	3,000.00		345
5-29	505	G. W. Peckham	Transfer of Trust Funds (Salary)	400.00		345
6- 2	507	City National Bank	Transfer of Trust Funds (Marlborough)	1,500.00		346
6-16	510	City National Bank	Transfer of Trust Funds (Marlborough)	4,500.00		346
7- 6	512	G. W. Peckham	Transfer of Trust Funds (Salary)	400.00		346
7-15	519	City National Bank	Transfer of Trust Funds (Marlborough)	1,000.00		347
8- 2	523	G. W. Peckham	Transfer of Trust Funds (Salary)	400.00		347
8- 2	525	City National Bank	Transfer of Trust Funds (Marlborough)	4,000.00		348
8-27	532	City National Bank	Transfer of Trust Funds (Marlborough)	4,357.58		348
9-30	537	G. W. Peckham	Transfer of Trust Funds (Salary)	400.00		348
10-30	545	G. W. Peckham	Transfer of Trust Funds (Salary)	400.00		349
11-20	550	City National Bank	Transfer of Trust Funds (Royalty #95—Anderson, $5,000.00 and Royalty #96—Polk, $2,500.00)	7,500.00		350

		Oil Runs received by the Trust	(Royalty #95 and 96)		None	
12- 2	552	G. W. Peckham	Transfer of Trust Funds (Salary)	400.00		350
12- 2	554	City National Bank	Transfer of Trust Funds (Royalty #83—Porter Ranch, $1,141.82, Royalty #93, Ellis County, Okla., $160.00, and Royalty #96, Polk land, $198.18)	1,500.00		350
		Oil Runs received by the Trust on Royalties #83, 93, and 96			None	
12- 8		City National Bank	Check of G. W. Peckham (Payment on Note #81992 of the Wichita Royalty Company)		500.00	
12-15	557	City National Bank	Trust Check #557 taking up draft from Texas State Bank at Eastland (Royalty #94, Hartley County)	1,920.00		
		Oil Runs received by the Trust on Royalty #94—Hartley County			None	
1927						
1- 4	556-A	G. W. Peckham	Transfer of Trust Funds (Marlborough)	538.16		350
1- 4	564	G. W. Peckham	Transfer of Trust Funds (Salary)	400.00		351
1-19	571	City National Bank	Transfer of Trust Funds (Marlborough)	2,000.00		351

Date Paid	Trust Voucher No.	Payee	Explanation	Debit	Credit	Page No.
2- 2	574	G. W. Peckham	Transfer of Trust Funds (Salary)	400.00		351
2-19	579	City National Bank	Transfer of Trust Funds (Marlborough)	2,500.00		352
3- 3	581	G. W. Peckham	Transfer of Trust Funds (Salary)	400.00		352
3- 8	582	City National Bank	Transfer of Trust Funds	500.00		352
3-16	583	City National Bank	Transfer of Trust Funds (Royalty #96—Polk Land)	301.82		353
			Oil Runs received by the Trust on Royalty #96		None	
3-23	591	City National Bank	Transfer of Trust Funds	2,000.00		353
4- 2	594	G. W. Peckham	Transfer of Trust Funds (Salary)	400.00		353
4-23	602	B. L. Fain	Indorsed by G. W. Peckham—Transfer of Trust Funds (Royalty #97—Roxanna Oil Payment)	1,000.00		354
			Oil Runs received by the Trust on Royalty #97 from March 1, 1927 to November 15, 1928		397.85	
4-30	604	G. W. Peckham	Transfer of Trust Funds (Salary)	400.00		354
5- 6	607	B. L. Fain	Indorsed by G. W. Peckham—Transfer of Trust Funds (Royalty #97—Roxanna Oil Payment)	500.00		354
5-16	610	B. L. Fain	Indorsed by G. W. Peckham—Transfer of Trust Funds (Royalty #97—Roxanna Oil Payment)	1,000.00		355

6- 8	614	G. W. Peckham	Transfer of Trust Funds (Salary)	400.00		355
6-18	620	City National Bank	Transfer of Trust Funds	1,200.00		356
7- 1	623	G. W. Peckham	Transfer of Trust Funds (Salary)	400.00		356
8- 1	630	G. W. Peckham	Transfer of Trust Funds (Salary)	400.00		356
8-16	635	City National Bank	Transfer of Trust Funds	1,500.00		356
8-31		City National Bank	Check of G. W. Peckham in payment of interest on Wichita Royalty Company note #1587		500.00	
9- 6	637	G. W. Peckham	Transfer of Trust Funds (Salary)	400.00		357
10-15	650	City National Bank	Transfer of Trust Funds	2,400.00		357
10-19		On Note	Check of G. W. Peckham payment on Note #36 of Wichita Royalty Company Principal, $1,076.00, Interest #260.00		1,336.00	
11- 5	653	G. W. Peckham	Transfer of Trust Funds (Salary)	400.00		357
11-25	657	City National Bank	Transfer of Trust Funds	1,800.00		358
11-25		City National Bank	Check of G. W. Peckham payment on Wichita Royalty Company Note #1587		1,500.00	
12- 5	659	G. W. Peckham	Transfer of Trust Funds (Salary)	400.00		358
12-21	670	G. W. Peckham	Transfer of Trust Funds (Royalty #83—Porter Ranch)	147.33		359
12-27	672	G. W. Peckham	Transfer of Trust Funds (Salary)	400.00		358

Date Paid 1928	Trust Voucher No.	Payee	Explanation	Debit	Credit	Page No.
1-31	684	G. W. Packham	Transfer of Trust Funds (Salary)	400.00		359
2-15		W. C. Duncan	(Plaintiff's Exhibit #146 being Cashier's Check #12328 issued by the Wichita State Bank and Trust Co. and payable to W. C. Duncan, indorsed payable to the order of G. W. Peckham for Bristow Royalty—W. C. Duncan, also indorsed by G. W. Peckham)	6,000.00		
2-15		City National Bank	Check of G. W. Peckham payment on Wichita Royalty Company Note #4558		3,485.33	
3- 6	692	G. W. Peckham	Transfer of Trust Funds (Salary)	400.00		359
3-31	701	G. W. Peckham	Transfer of Trust Funds (Salary)	400.00		359
4- 6	702	City National Bank	Transfer of Trust Funds (Traveling)	548.12		360
4-11	706	G. W. Peckham	Transfer of Trust Funds (Abstracts)	169.75		360
4-23	710	City National Bank	Transfer of Trust Funds	1,850.00		360
5- 1	713	G. W. Peckham	Transfer of Trust Funds (Salary)	400.00		361
5-21	718	G. W. Peckham	Transfer of Trust Funds (Automobile)	140.68		361

6-12	720	G. W. Peckham	Transfer of Trust Funds (Salary)...	400.00		361
7- 9	727	G. W. Peckham	Transfer of Trust Funds (Salary)...	400.00		361
8- 7	738	G. W. Peckham	Transfer of Trust Funds (Salary)...	400.00		362
9-10	747	G. W. Peckham	Transfer of Trust Funds (Salary)...	400.00		362
9-27	752	City National Bank	Transfer of Trust Funds (Interest)..	424.66		362
9-27		City National Bank	Check of G. W. Peckham payment on Note of Wichita Royalty Company, #11167		424.66	
10-12	754	G. W. Peckham	Transfer of Trust Funds (Salary)...	400.00		363
11- 1	762	G. W. Peckham	Transfer of Trust Funds (Salary)...	400.00		363
11-30	767	G. W. Peckham	Transfer of Trust Funds (Salary)...	400.00		363
12-31	775	G. W. Peckham	Transfer of Trust Funds (Salary)...	400.00		363
1929						
2- 5	785	G. W. Peckham	Transfer of Trust Funds (Salary)...	400.00		364
3- 8	793	G. W. Peckham	Transfer of Trust Funds (Salary)...	400.00		364
3-26	797	G. W. Peckham	Transfer of Trust Funds (Salary)...	400.00		364
5- 1	806	G. W. Peckham	Transfer of Trust Funds (Salary)...	400.00		365
5-31	813	G. W. Peckham	Transfer of Trust Funds (Salary)...	400.00		365
7- 9	821	G. W. Peckham	Transfer of Trust Funds (Salary)...	400.00		365
8- 2	829	G. W. Peckham	Transfer of Trust Funds (Salary)...	400.00		365
9- 5	837	G. W. Peckham	Transfer of Trust Funds (Salary)...	400.00		366

Date Paid	Trust Voucher No.	Payee	Explanation	Debit	Credit	Page No.
10- 2	843	G. W. Peckham	Transfer of Trust Funds (Salary)...	400.00		366
11- 1	852	G. W. Peckham	Transfer of Trust Funds (Salary)...	400.00		366
		Totals		$198,882.76	$88,656.88	
				88,656.88		
		Net Balance		$110,225.88		

Note: The above account is subject to such change of debits and credits as the Court may determine, including computation of interest.

Wichita Royalty Company in Account With G. W. Peckham.

Period of March 10, 1923, to November 1, 1929.

Date Paid 1923	Trust Voucher No.	Payee	Explanation	Debit
			Balance as per statement made with the City National Bank for period of April 10, 1923, to November 1, 1929	$110,225.88
3-10	1253	City National Bank	(Indorsed Credit Account B. L. Fain) Voucher Notation: To apply on last payment of Royalty Interest #71, 3/128ths total production 160 acres, Grimshaw Farm. Young County, Texas	2,500.00
5-21	1272	City National Bank	(Voucher Notation: Traveling expense for Geo. W. Peckham, Trustee of Wichita Royalty Company)	500.00
4- 2	1280	Geo. W. Peckham	(Voucher Notation: Executive Salary for March, 1923)	500.00
6- 2	1339	Geo. W. Peckham	(Voucher Notation: Executive Salary for month of May)	500.00
7- 5	13	Geo. W. Peckham	(Voucher Notation: Executive Salary for month of June)	500.00
12- 1	115	Geo. W. Peckham	(Voucher Notation: Salary-Executive for the month of November, 1923)	500.00

1701

Date Paid	Trust Voucher No.	Payee	Explanation	Debit
1924				
3-13	180	Geo. W. Peckham	(Voucher Notation: To Reimbursement in Insurance Premium on Studebaker Touring Car—Amount exactly ½ of Premium)	30.95
5-13	221	Geo. W. Peckham	(Voucher Notation: Salaries-Executive)	500.00
7- 3	237	Security National Bank.	(Voucher Notation: To purchase of interest in lots 9 and 10, Block 41, J. H. White lands, Archer County, Texas)	11,000.00
7-26	246	Security National Bank.	(Voucher Notation: To purchase of interest in lots 9 and 10, Block 41, J. H. White lands, Archer County, Texas)	10,000.00
9- 3	261	Geo. W. Peckham	(Voucher Notation: Salaries-Executive)	500.00
1926				
3-10	479	Security National Bank	(Marlborough)	6,000.00
5- 5	497	Geo. W. Peckham	(Voucher Notation: Salaries-Executive, for the month of April, 1926)	400.00
8-20	529	Geo. W. Peckham	(Voucher Notation: Salaries-Executive, for the month of August, 1926)	400.00
12-22	556	Geo. W. Peckham	(Voucher Notation: Interest Expense: To apply on two notes of $7,738.50 at the rate of 8% per annum, this interest applying on period of	

			9-10-25 to 9-19-26—Highland Irrigation Company Notes)	700.00
1927				
4-12	598	B. L. Fain	(Voucher Notation: Purchase Oil Runs to apply on to purchase of $4,200.00 in oil runs due from Roxanna on Milner—Wilbarger County, Purchase Price $3,000.00)	500.00
11- 3	643	G. W. Peckham	(Voucher Notation: Salaries-Executive, for the month of September, 1927)	400.00
1929				
2- 2	778	G. W. Peckham	(Voucher Notation: Taxes paid on the Porter Ranch—Our Proportion)	21.63
			Total	$139,341.24

2045

[illegible] NATIONAL BANK OF
[illegible] G. W. PECKHAM'S PERSONAL
[illegible] OF THE COMMINGLED ACCOUNT

[illegible]	[illegible]	[illegible]
[illegible]	$ 390.[illegible]	Trust check [illegible]
[illegible]	275.51	Trust check [illegible]
		Trust check [illegible]
[illegible]	67.[illegible]	Trust check [illegible]
[illegible]	[illegible]	Trust check [illegible]
[illegible]	[illegible]	Trust check [illegible]
[illegible]	[illegible]	Trust check [illegible]
[illegible]	[illegible]	Trust check [illegible]
[illegible]	[illegible]	Trust check [illegible]
[illegible]	[illegible]	Trust check [illegible]
[illegible]	[illegible]	Trust check [illegible]
[illegible]	[illegible]	Trust check [illegible]
[illegible]	10.00	Trust check #607
[illegible]	520.00	Trust check #650
[illegible]	[illegible]	Plaintiff's Exhibit #146
[illegible]	13.[illegible]	Trust checks #727, 738 and 747
1-12-25	[illegible]	Trust check #775
TOTAL	$ 10,713.[illegible]	
	2,567.75	
	$13,281.59	

727 Salary
738 Salary
747 Salary
775 Salary

1704

M. E. WALLACE, C. P. A., WICHITA FALLS, TEXAS

Analysis of G. W. Peckham's Commingled Account in the City National Bank, Wichita Falls, Texas.

Period of May 11, 1923, to June 22, 1923.

1923	Detail	Personal Funds Checks	Personal Funds Deposits	Personal Funds Balance	Trust Funds Checks	Trust Funds Deposits	Trust Funds Balance	Commingled Balance
5-11 Balance at beginning of business on May 11, 1923				$1,488.94				
5-11 Trust Check #1325 payable to G. W. Peckham: Voucher notation (to apply to last payment of Royalty Interest #71—Grimshaw tract, Young Co., Texas, $2,500.00, interest $33.33)						$2,533.33		
5-11 Phone Co.		$41.60		1,947.34			$2,533.33	$4,480.67
5-12 Deposit—(8-17-D-Perpetual Royalty Co.)	$1,000.00							
5-12 Deposit—(Interest)	33.33		$1,033.33					
5-11			500.00					
5-12 Deposit (7)	2,000.00							
5-12 Deposit (7)	500.00		2,500.00					
5-12 J. E. Vaeth		637.50						
5-12 City Nat'l Bank		215.33						
5-12 City Nat'l Bank		2,000.00		2,627.84			2,533.33	5,161.17
5-14 Deposit (7)			702.03					
5-14 Deposit (7)	1,269.43							
5-14 Deposit	510.00		1,779.43					
5-14 Bessie Day		30.00						
5-14 Hurley & Fletcher		5.00						
5-14 Cash		50.00						
5-14 City Nat'l Bldg.		65.00		4,959.30			2,533.33	7,492.63
5-15 Independent Gro.		5.00						
5-15 Perkins Timberlake		19.75						
5-15 Note—(On Note & Interest of G. W. Peckham #37474, Principal $1,000.00, Interest $8.55)		1,008.55		3,926.00			2,533.33	6,459.33
5-16 Wichita Royalty Co. 3-12-31, Royalty #71—(Oil Runs on Grimshaw)					$234.05			
5-16 City Nat'l Bank		125.00		3,801.00			2,299.28	6,100.28
5-17 Wichita Floral Co.		7.00		3,794.00			2,299.28	6,100.28
5-18 Deposit (7)			637.50					
5-18 County Clerk (Recording Fee)		1.50						
5-18 Perpetual Royalty Syndicate—(Oil Runs on Grinshaw 2-12 to 4-1-23)		175.51						
5-18 Perkins Timberlake		10.00						
5-18 Independent Gro.		10.00		4,234.49			2,299.28	6,533.77
5-19 Deposit ($7,000.00 (7))	223.94							
5-19 Deposit ($7,000.00 (7))	180.94		403.98					
5-19 On Note—$144.36, Interest $745.30		889.66		3,748.81			2,299.28	6,048.09
5-21 Cash		4.00						
5-21 McConnell Bros.		22.05						
5-21 Perkins Timberlake		29.75		3,693.01			2,299.28	5,992.29

Analysis of G. W. Peckham's Commingled Account in the City National Bank, Wichita Falls, Texas.

Period of May 15, 1923, to June 22, 1923 (Cont'd).

1923		Detail	Personal Funds Checks	Personal Funds Deposits	Personal Funds Balance	Trust Funds Checks	Trust Funds Deposits	Trust Funds Balance	Commingled Balance
5-22	Bessie Day (Steno.)		$ 30.00						
5-22	B. L. Fain (Com.)		666.00						
5-22	Cash (Draft)		1,215.00		$1,782.01			$2,299.28	$4,081.29
5-23	Deposit (7)			$1,513.33	3,295.34			2,299.28	5,594.62
5-24	Deposit (7)	756.66							
	Deposit (7)	16.00							
	Deposit (7)	1.00		773.66					
5-24	King Royalty Co. (Part Pur. Price)		3,026.66						
5-24	Deposit (7)	1,530.00							
	Deposit (7)	750.00		2,280.00	3,322.34			2,299.28	5,621.62
5-25	B. L. Fain (Com.)		750.00						
5-25	Noble-Little Hdw. Co.		7.25						
5-25	Cash		75.00						
5-25	B. L. Fain (Com.)		500.00		1,990.09			2,299.28	4,289.37
5-25	Guy C. Raley (Taxes #373)		85.36						
5-26	B. L. Fain (Com.)		677.77						
5-26	Bessie Day (Steno.)		30.00						
5-26	W. B. McClurkan Co.		146.45		1,050.51			2,299.28	3,349.79
5-28	H. J. Anderson (Taxes)		143.52						
5-28	Dr. Guest		8.00						
5-28	Wichita Royalty Co. (Oil Runs on Grimshaw for April runs by Humble) Royalty #71				898.99	302.98		1,995.30	2,895.29
5-29	J. C. Winfry		10.00						
5-29	Perpetual Royalty Syndicate (Oil Runs for April on Grimshaw run by Humble)		101.00		787.99			1,996.30	2,784.29
6- 1	Cash		1.48						
6- 1	Mack Heck		6.30						
6- 1	Wichita Co. Water Improvement District #1		38.37						
6- 1	Bessie Day (Steno.)		30.00						
6- 1	Cash		50.00		661.84			1,996.30	2,658.14
6- 2	Deposit (17 D Perpetual Royalty Co.)	1,000.00							
6- 2	Deposit—Perpetual Royalty Int.	40.00		1,040.00	1,701.84				3,698.14
6- 4	City Nat'l Cigar Co.		2.25						
6- 4	City Nat'l Bank		750.00		949.59			1,996.30	2,945.89
6- 5	Deposit (7)	1,816.00							
	Deposit (7)	5.46		1,821.46	2,771.05			1,996.30	4,767.35
6- 6	Tolowa Royalties, Inc.		200.00						
6- 6	Tolowa Royalties, Inc.		400.00						
6- 6	B. L. Fain		684.01						
6- 6	B. L. Fain		250.00		1,237.04			1,996.30	3,233.34

Analysis of G. W. Peckham's Commingled Account in the City National Bank, Wichita Falls, Texas.

Period of May 15, 1923, to June 22, 1923 (Cont'd).

	Detail	Personal Funds Checks	Personal Funds Deposits	Personal Funds Balance	Trust Funds Checks	Trust Funds Deposits	Trust Funds Balance	Commingled Balance
1923								
6- 7	Deposit (7)		$4,053.33					
6- 7	Security Nat'l Bank	$ 500.00						
6- 7	Kay—Akin & Kenley	155.00		$4,635.37			$1,996.30	$6,631.67
6- 8	B. L. Fain	5,066.66						
6- 8	Western Union	11.26						
6- 8	Bessie Day	30.00						
6- 8	Keim Motor Co.	10.25		—o—	$482.80		1,513.50	1,513.50
6- 9	Deposit (1402—Escrow No. 1662 Nat'l Royalty Co. W. S. A.)		2,500.00					
6- 9	S. W. Bell Telephone Co.	11.20		2,488.80			1,513.50	4,002.30
6-11	Oil & Gas Journal	6.00						
6-11	City Nat'l Bank	214.67		2,268.13			1,513.50	3,781.63
6-12	Deposit (Note)		750.00					
6-12	W. H. Peckham (Payment for Fain on Lumsey Deere 5 Acres)	1,510.00						
6-12	W. H. Peckham	515.25						
6-12	City Nat'l Bldg. (June Rent)	65.00		927.88			1,513.50	2,441.38
6-13	Deposit (Note (19))		6,000.00					
6-13	Cash	1,000.00						
6-13	B. L. Fain	503.33						
6-13	B. L. Fain	33.00						
6-13	Bessie Day	500.00						
6-13	Bessie Day	30.00						
6-13	B. L. Fain	615.00						
6-13	Cash	1,000.00						
6-13	City Nat'l Bank (Int. on W. H. Peckham's Note)	81.20		3,165.35			1,513.50	4,678.85
6-14	Deposit (7) #7910		750.00	3,915.35			1,513.50	5,428.85
6-15	King Royalty Co.	5,000.00		—o—	1,084.65		428.85	428.85
6-19	Deposit (7) #8950		6,000.00					
6-19	City Nat'l Bank	2,000.00		4,000.00			428.85	4,428.85
6-20	Cash	675.00		3,325.00			428.85	3,753.85
6-21	B. L. Fain	615.00						
6-21	F. O. Harrell	26.66		2,683.34			428.85	3,112.19
6-22	I. C. Speney	23.60						
6-22	Check of G. W. Peckham credited on the liability of G. W. Peckham in the City Nat'l Bank, Note #37717, Principal $3,000.00, Int. $50.60	3,050.60		—o—	390.86		37.99	37.99

Analysis of G. W. Peckham's Commingled Account in the City National Bank, Wichita Falls, Texas.

Period of September 1, 1923, to October 16, 1923.

1923		Detail	Personal Funds Checks	Personal Funds Deposits	Personal Funds Balance	Trust Funds Checks	Trust Funds Deposits	Trust Funds Balance	Commingled Balance
9- 1	Balance at beginning of business on September 1, 1923				$13,466.92				$13,466.92
9- 1	Deposit (8)			$2,000.00					
9- 1	Trust Check #54 payable to G. W. Peckham with voucher notation "Salaries-Executive Month of August						$500.00		
9- 1	Deposit (8)	$10,311.00							
9- 1	Deposit (8)	2,053.33							
9- 1	Deposit (8)	135.45		12,499.78					
9- 1	E. E. Scannell		229.40						
9- 1	D. M. Certified Check #964 for $8,000.00 and Check #965 for $4,515.19 both payable to Perpetual Royalty Syndicate		12,515.19						
9- 1	Van Dyke Motor Co.		1,702.95		13,519.16			$500.00	14,019.16
9- 4	Deposit (4) (Escrow #1846 W. C. Cook W. S. A.)			4,125.00					
9- 4	Deposit (13) Cashier's Check	1,800.00							
9- 4	Deposit Less V. L. Notes	1,529.65		270.35					
9- 4	Deposit (7) #9093	20.60							
9- 4	Deposit (7)	135.45							
9- 4	Deposit (7)	5,000.00							
9- 4	Deposit (7)	1,126.66		6,282.11					
9- 4	W. H. Peckham		1,540.00						
9- 4	W. H. Peckham		2,000.00						
9- 4	W. H. Peckham		1,026.66						
9- 4	W. J. Daugherty		67.50						
9- 4	Cash		7,000.00						
9- 4	Telephone Co.		40.55						
9- 4	Carter & Balyeat		1,400.00						
9- 4	City Nat'l Bank		1,005.00						
9- 4	Anita Cleveland		25.00						
9- 4	Hurley & Fletcher		75.00						
9- 4	Greever Wynne & Maer		61.90						
9- 4	Check Missing		4,515.19						

Analysis of G. W. Peckham's Commingled Account in the City National Bank, Wichita Falls, Texas.

Period of September 1, 1923, to October 16, 1923 (Cont'd).

1923	Detail	Personal Funds Checks	Personal Funds Deposits	Personal Funds Balance	Trust Funds Checks	Trust Funds Deposits	Trust Funds Balance	Commingled Balance
9- 4	W. B. McClurkan (Acct. to Date)	$ 11.50		$5,428.32			$ 500.00	$5,928.32
9- 5	Anita Cleveland (Salary to 9-29-33)	100.00						
9- 5	J. H. White (Oil Runs on Goltry 1st ½ of August by Texas Co.)	18.44						
9- 5	J. H. White (Estimated balance of Oil Runs on Goltry 1st ½ of August)	342.41		4,967.47			500.00	5,467.47
9- 6	Check Missing	10.21		4,957.26			500.00	5,457.26
9- 8	City Nat'l Bldg.	65.00		4,892.26			500.00	5,392.26
9-14	B. L. Fain	1,000.00		3,892.26			500.00	4,392.26
9-24	Deposit (13) W. S. A. Interest 8% on $4,125.00 from 9-1 to 9-24 credit on escrow Peckham-Cook—This paid by Jos. H. White		$21.05					
9-24	D. M. E. J. Power Co.—8-31-23 returned twin unpaid—issued for credit on Peckham and Cook escrow. Pro fees $2.57 Credit acct. of G. W. Peckham. F. O. Y. has check	4,125.00		—o—	$211.69		288.31	288.31
10-16	Deposit (7)		3.77					
10-16	Deposit—Trust check #73 payable to G. W. Peckham with voucher notation "Salaries-Executive to 10-1-23					$500.00		
10-16	City Nat'l Bank—Interest on charged off note of G. W. Peckham, see page ..... of testimony	283.34		—o—	279.57		508.74	508.74

Analysis of G. W. Peckham's Commingled Account in the City National Bank, Wichita Falls, Texas.

Period of February 2, 1924, to February 5, 1924.

1924	Detail	Personal Funds Checks	Personal Funds Deposits	Personal Funds Balance	Trust Funds Checks	Trust Funds Deposits	Trust Funds Balance	Commingled Balance
2- 2	Balance at beginning of business on February 2, 1924..			$ 975.92				$ 975.92
	Trust Check #154 payable to B. L. Fain with voucher notation as follows: To Purchase of Royalty interests in Tonkoma and Creek County, Oklahoma: Lumsey Deere Farm, Carmichael Farm, Beverlin Farm, McDaniel Farm, Goltry Farm. Notation in inks as follows: See letter from G. W. Peckham to Wichita Royalty Co., dated March 17, 1924. This money to apply on Wilson royalty instead of above					$12,000.00		
2- 2	B. L. Fain (January 1 to 15 oil runs on Goltry sold to King)	$ 20.11						
2- 2	B. L. Fain (Oil runs 12/16 to 31 Goltry sold to King)..	18.59						
2- 2	Anita Cleveland	25.00						
2- 2	W. H. Peckham	857.15						
2- 2	W. H. Peckham	2,000.00						
2- 2	Perkins Timberlake Co.	10.18						
2- 2	Wichita Royalty Co. (Return of $5,000.00 received by G. W. Peckham on Co. Check #147 (charged against trust fund only because the result is the same)				$5,000.00			
2- 2	W. H. Peckham	500.00						
2- 2	Keim Motor Co.	2.80						
2- 2	McClurkan & Co.	31.80		-o-	2,489.71		$4,510.29	4,510.29
2- 4	Deposits (7)		$333.33					
2- 4	W. H. Peckham	750.00						
2- 4	City Nat'l Bank (Cashier's Check #85473)	1,500.00		-o-	1,916.67		2,593.62	2,593.62
2- 5	B. L. Fain	650.00						
2- 5	Interest (Interest on Note #44544 of G. W. Peckham with City Nat'l Bank of Wichita Falls)	67.67		-o-	717.67		1,875.95	1,875.95

Analysis of G. W. Peckham's Commingled Account in the City National Bank, Wichita Falls, Texas.

March 18, 1924.

1924		Personal Funds				Trust Funds			Commingled Balance
		Detail	Checks	Deposits	Balance	Checks	Deposits	Balance	
3-18	Balance at beginning of business on March 18, 1924...				$11,033.48				$11,033.48
3-18	Deposit (6) #6711 Notation Dft. Raking on Grand Junction, Colo.			$3,750.00					
3-18	Deposit (7) #7748 Trust Check #185 payable to G. W. Peckham with voucher notation as follows: (To cover difference in purchase price of Tonkoma—Deere Royalties our check #154 and purchase price of $27,500.00 for 1/8 of royalty on Luke Wilson 80 acres, Block 27, Ray-Mossie-Featherston and Maer-Staniforth Leases. Total Cash payment $21,250.00 to be paid from oil $6,250.00)						$9,250.00		
3-18	Deposit	$35.00							
3-18	Deposit	7.36		42.36					
3-18	Deposit (19) J. T. H.—Massie			$75,000.00					
3-18	Wichita Falls Golf and Country Club		$ 200.00						
3-18	L. F. Wilson (Bal. of purchase price of Royalty).....		80,000.00						
3-18	Geo. Peckham		1,000.00						
3-18	G. W. Peckham		4,000.00						
3-18	Cash		100.00						
3-18	Note and Interest (Payment on Note #47675 of W. H. Peckham, principal $10,084.33, rebate $57.58).....		10,026.75		—o—	$5,500.91		$3,749.09	$3,749.09

Analysis of G. W. Peckham's Commingled Account in the City National Bank, Wichita Falls, Texas.

May 5, 1925, to May 12, 1925.

1925	—	Personal Funds Detail	Personal Funds Checks	Personal Funds Deposits	Personal Funds Balance	Trust Funds Checks	Trust Funds Deposits	Trust Funds Balance	Commingled Balance
5- 5	Balance at beginning of business on May 5, 1925.....				$5,509.45				$5,509.45
5- 5	Deposit (10) Trust Check #373 payable to G. W. Peckham with voucher notation as follows: To purchase of 1/16 of the Royalty in the Routan land 117 acres in Archer County, Texas	$2,500.00							
5- 5	Deposit (10)	$2,500.00							
5- 5	Deposit (10)	5,000.00							
5- 5	Deposit (10)	4,000.00							
5- 5	Deposit (10)	1,300.00							
5- 5	Deposit (10)	2,200.00							
5- 5	Deposit (10)	2,500.00		$17,500.00					
5- 5	Tipton's Drug Store		$ 3.50						
5- 5	O. W. Harvey		69.36						
5- 5	J. H. Massie		1,500.00						
5- 5	J. H. Massie		410.00						
5- 5	Auto Apartments		26.74						
5- 5	City Nat'l Bank (Safety Box #927).....		10.00						
5- 5	Cash		1,200.00						
5- 5	Wichita Club		6.80		19,783.05			$2,500.00	22,283.05
5- 6	Munger Auto Co.		159.55						
5- 6	Muse and Robertson (¾ your interest in Wolf 400 acre Royalty-Alice Phillips Well)		4,250.00						
5- 6	Wichita Falls Building and Loan Assn.		100.00						
5- 6	Wichita Falls Building and Loan Assn.		100.00						
5- 6	Wichita Falls Building and Loan Assn.		50.00						
5- 6	Ray & Massie (1/12th interest in deal with Allen M-R, Land)		2,500.00						
5- 6	W. H. Peckham (Profits on 560 acre Wolf Royalty sold to date)		2,400.00						
5- 6	W. H. Peckham (Profits on 40 acres Major Pool Archer County)		250.00						

Analysis of G. W Peckham's Commingled Account in the City National Bank, Wichita Falls, Texas.

May 5, 1925, to May 12, 1925 (Cont'd).

1925		Detail	Checks	Personal Funds Deposits	Balance	Checks	Trust Funds Deposits	Balance	Commingled Balance
5- 6	Thos. Holcomb (Little Royalty sold Ray and Massie)		$ 740.00						
5- 6	Telephone Co.		24.10		$9,209.40			$2,500.00	$11,709.40
5- 7	M. M. Garrett (Sale of 40 acres in Major Pool in Archer County)		333.33						
5- 7	Shaphard-Crouch		35.00						
5- 7	F. O. Harrell		5,000.00						
5- 7	Hartsook & Stripling		3.00		3,838.07			2,500.00	6,338.07
5- 8	T. C. Scales, Jr. (Sale of 1/8 Royalty on 200 acres Wolf Land)		250.00						
5- 8	Cash		800.00						
5- 8	Telephone Co.		2.50		2,785.57			2,500.00	5,285.57
5- 9	M. & F. Parkway		5.00						
5- 9	City Nat'l Bank (Cashier's Check #102360)		825.00						
5- 9	City Nat'l Bldg. (May Rent)		65.00						
5- 9	City Nat'l Bank (Cashier's Check #102359)		1,200.00		690.57			2,500.00	3,190.57
5-11	Anita Cleveland		30.00						
5-11	Langford Motor Co. (Ford Coupe)		707.40		-o-	$46.83		2,453.17	2,453.17
5-12	Deposit (8)	$1,550.00							
5-12	Deposit (8)	2,633.00		$4,183.00					
5-12	Collector of Internal Revenue		509.89						
5-12	Collector of Internal Revenue		474.91						
5-12	Security Nat'l Bank		200.00						
5-12	You (Payment on Note #60576 of G. W. Peckham, Principal $4,000.00, Interest $56.00)		4,056.00						
5-12	Thos. Holcomb (Bal. Little Royalty)		329.12		-o-	1,386.92		1,066.25	1,066.25

Analysis of G. W. Peckham's Commingled Account in the City National Bank, Wichita Falls, Texas.

Period of June 2, 1925, to June 11, 1925.

1925	Detail	Personal Funds Checks	Personal Funds Deposits	Personal Funds Balance	Trust Funds Checks	Trust Funds Deposits	Trust Funds Balance	Commingled Balance
6- 2	Balance at beginning of business on June 2, 1925			$2,331.89				$2,331.89
6- 2	Deposit (10) Trust Check #378 in favor of G. W. Peckham with voucher notation as follows: Executive Salary for May					$400.00		
6- 2	Wichita Bldg. and Loan	$250.00						
6- 2	Telephone Co.	16.70		2,065.19			400.00	2,465.19
6- 3	Cash	200.00						
6- 3	Tipton Drug Store	3.50						
6- 3	Security Nat'l. Bank	200.00						
6- 3	Wichita Club	3.40						
6- 3	Greener Wynne & Maer	24.70						
6- 3	Keim Motor Co.	.75						
6- 3	W. B. McClurkan	10.00		1,622.84			400.00	2,022 84
6- 4	E. C. De Montel	60.00						
6- 4	City Nat'l Bank	25.00						
6- 4	Phone Co.	3.80						
6- 4	Auto Apartments	15.00		1,519.04			400.00	1,919.04
6- 6	City Nat'l Bldg.	65.00						
6- 6	Interest—Interest on note #61679 of G. W. Peckham $20.00, interest on note #61579 of G. W. Peckham $200.00	220.00		1,234.04			400.00	1,634.04
6- 8	B. L. Fain	1,000.00						
6- 8	Anita Cleveland	30.00						
6- 8	County Clerk—Archer Co.	1.50		202.54			400.00	602.54
6-11	You—Interest on note #61679 of G. W. Peckham	66.67						
6-11	Cash	5.00						
6-11	R. &. M. Parkway	5.00						
6-11	Anita Cleveland	500.00		—o—	$374.13		25.87	25.87

Analysis of G. W. Peckham's Commingled Account in the City National Bank, Wichita Falls, Texas.

Period of January 1, 1926, to February 2, 1926.

			Personal Funds			Trust Funds		Commingled
1926	Detail	Checks	Deposits	Balance	Checks	Deposits	Balance	Balance
1- 4	Balance at the beginning of business on January 4, 1926			$878.70				$ 878.70
4	Deposit (8) (Trust Check #452 payable to G. W. Peckham—Royalty #84 Stephens)					$5,000.00		
4	Mrs. H. H. Brown	$ 30.00		848.70			$5,000.00	5,848.70
5	Highland Irrigation Co.—(Prin. 4 notes $175.00, $700.00. Int. on Series $112.00, Lots 11, 12, 13 and 14, Block 44A)	812.00		36.70			5,000.00	5,036.70
6	Langford Motor Co.	10.45						
6	Cash	800.00						
6	Auto Storage Co.	12.05						
6	Western Union	1.08		—o—	$786.88		4,213.12	4,213.12
7	Wichita Floral Co.	20.00						
7	Wichita Falls Golf Club	20.63						
7	Landon-Hill Company	82.90						
7	Munger Auto Company	94.12						
7	J. P. & E. M. Sommerville	24.72						
7	Renfro Drug Company	3.50						
7	Keim Motor Company	6.30						
7	W. B. McClurkan	40.75						
7	Perkins-Timberlake Co.	90.11						
7	W. A. Freear Furn. Co.	39.50						
7	Wichita Club	22.00		—o—	444.53		3,768.59	3,768.59
8	Wichita Falls Medical & Surgical Clinic	25.00						
8	Noble-Little Hardware Co.	30.00						
8	Art Jewelry Company	218.00						
8	Wichita Falls Building & Loan	250.00						
8	Wichita General Hospital	107.90						
8	Greever-Wynne & Maer	65.39						
8	Cash	500.00			1,196.29		2,572.30	2,572.30
9	Deposit (8)		$100.00					
9	Auto Tire Company	4.75						
9	Chamber of Commerce	1.50						
9	Chamber of Commerce	100.00						
9	E. C. De Montel	15.00						
9	City National Building	65.00						
9	Mrs. H. H. Brown	30.00		—o—	116.25		2,456.05	2,456.05
11	Deposit (7) (Trust Check #458 favor of City National Bank—Voucher Notation Producing Royalties #84 (Stephens)					5,000.00		
11	Curlee Land "K-82"	2,567.75		—o—			4,888.30	4,888.30
12	Eva B. Roberts	49.00						
12	Highland Irrigation (Marlborough)	454.50					4,384.80	4,384.80

1926		Detail	Checks	Deposits	Balance	Checks	Deposits	Balance	Balance
1- 4	Balance at the beginning of business on January 4, 1926				$878.70				$ 878.70
4	Deposit (8) (Trust Check #452 payable to G. W. Peckham—Royalty #84 Stephens)						$5,000.00		
4	Mrs. H. H. Brown		$ 30.00		848.70			$5,000.00	5,848.70
5	Highland Irrigation Co.—(Prin. 4 notes $175.00, $700.00. Int. on Series $112.00, Lots 11, 12, 13 and 14, Block 44A)		812.00		36.70			5,000.00	5,036.70
6	Langford Motor Co.		10.45						
6	Cash		800.00						
6	Auto Storage Co.		12.05						
6	Western Union		1.08		—o—	$786.88		4,213.12	4,213.12
7	Wichita Floral Co.		20.00						
7	Wichita Falls Golf Club		20.63						
7	Landon-Hill Company		82.90						
7	Munger Auto Company		94.12						
7	J. P. & E. M. Sommerville		24.72						
7	Renfro Drug Company		3.50						
7	Keim Motor Company		6.30						
7	W. B. McClurkan		40.75						
7	Perkins-Timberlake Co.		90.11						
7	W. A. Freear Furn. Co.		39.50						
7	Wichita Club		22.00		—o—	444.53		3,768.59	3,768.59
8	Wichita Falls Medical & Surgical Clinic		25.00						
8	Noble-Little Hardware Co.		30.00						
8	Art Jewelry Company		218.00						
8	Wichita Falls Building & Loan		250.00						
8	Wichita General Hospital		107.90						
8	Greever-Wynne & Maer		65.39						
8	Cash		500.00			1,196.29		2,572.30	2,572.30
9	Deposit (8)			$100.00					
9	Auto Tire Company		4.75						
9	Chamber of Commerce		1.50						
9	Chamber of Commerce		100.00						
9	E. C. De Montel		15.00						
9	City National Building		65.00						
9	Mrs. H. H. Brown		30.00		—o—	116.25		2,456.05	2,456.05
11	Deposit (7) (Trust Check #458 favor of City National Bank—Voucher Notation Producing Royalties #84 (Stephens)						5,000.00		
11	Curlee Land "K-82"		2,567.75		—o—			4,888.30	4,888.30
12	Eva B. Roberts		49.00						
12	Highland Irrigation (Marlborough)		454.50					4,384.80	4,384.80
13	Deposit (½ C. E. B. runs Stephens S-40 acres 1st ½ of December runs. 88,669 bbls., 186,376 Dale Oil & Rfg. Co.) (4)			931.88					

Analysis of G. W. Peckham's Commingled Account in the City National Bank, Wichita Falls, Texas.

Period January 1, 1926, to February 2, 1926 (Cont'd).

			Personal Funds			Trust Funds		
	Detail	Checks	Deposits	Balance	Checks	Deposits	Balance	Commingled Balance
1926								
1-13	Deposit (19) Vernon Oil Runs		$931.88					
13	Security National Bank	$ 200.00						
13	Telephone Company	13.60		$1,650.16			$4,384.80	$6,034.96
14	Wotola Royalties Inc. K-33	262.65						
14	Wotola Royalties Inc. K-32	308.00						
14	C. T. Francis	125.00		954.51			4,384.80	5,339.31
15	Miss Bridgit Silva	49.00						
15	Point Breeze Club	5.00		900.51			4,384.80	5,285.31
16	J. T. Harrell & C. E. Basham (Vernon Royalty) (Stephens)	2,201.32						
16	Municipal Gas Co.	32.06						
16	Mrs. H. H. Brown	30.00		—o—	$1,362.87		3,021.93	3,021.93
18	Deposit—Trust Check #461 favor of City National Bank, Voucher Notation as follows: #84 to purchase of ¼ royalty under Stephens 40 acres operated by Staley et al and Barclay & Meadows in South Vernon field, total cost $25,769.07, less paid $10,000.00					$15,769.07		
18	Gulf Refining Company	25.13		—o—	25.13		18,765.87	18,765.87
19	Tolowa K-35	1,630.79						
19	Wotola K-36	232.97		—o—	1,863.76		16,902.11	16,902.11
20	Eva B. Roberts	49.00		—o—	49.00		16,853.11	16,853.11
25	J. T. Harrell & C. E. Basham K-79 (Stephens Royalty)	10,028.00		—o—	10,028.00		6,825.11	6,825.11
26	Wichita General Hospital	95.90						
26	Mrs. H. H. Brown	30.00						
26	Jim Robinson	3.60		—o—	129.50		6,695.61	6,695.61
27	Cash	2,100.00		—o—	2,100.00		4,595.61	4,595.61
28	Eva B. Roberts	49.00		—o—	49.00		4,546.61	4,546.61
30	Deposit (8)	$1,235.99						
30	Deposit (8)	175.17	1,411.16					
30	Deposit (18) J. T. H. Dale Oil & Rfg. Co.		1,235.99					
30	Guy C. Raley	117.27						
30	M. H. Glover	10.00						
30	General Hospital	55.65						
30	Mrs. H. H. Brown	30.00		2,434.23			4,546.61	6,980.84
2- 1	W. R. Hyer, Tax Collector	112.44						
1	Eva Roberts	50.00		2,271.79			4,546.61	6,818.40
2	Deposit (7) 7,890 Trust Check #466 favor of G. W. Peckham, Voucher Notation Executive salary for Jan., 1926					400.00		
2	Deposit (7)		1,000.00					
2	Renfro Drug Company	6.95						

1-13	Deposit (19) Vernon Oil Runs							
13	Security National Bank		$ 200.00					
13	Telephone Company		13.60		$1,650.16		$4,384.80	$6,034.96
14	Wotola Royalties Inc. K-33		262.65					
14	Wotola Royalties Inc. K-32		308.00					
14	C. T. Francis		125.00		954.51		4,384.80	5,339.31
15	Miss Bridgit Silva		49.00					
15	Point Breeze Club		5.00		900.51		4,384.80	5,285.31
16	J. T. Harrell & C. E. Basham (Vernon Royalty) (Stephens)		2,201.32					
16	Municipal Gas Co.		32.06					
16	Mrs. H. H. Brown		30.00		—o—	$1,362.87	3,021.93	3,021.93
18	Deposit—Trust Check #461 favor of City National Bank, Voucher Notation as follows: #84 to purchase of ¼ royalty under Stephens 40 acres operated by Staley et al and Barclay & Meadows in South Vernon field, total cost $25,769.07, less paid $10,000.00					$15,769.07		
18	Gulf Refining Company		25.13		—o—	25.13	18,765.87	18,765.87
19	Tolowa K-35		1,630.79					
19	Wotola K-36		232.97		—o—	1,863.76	16,902.11	16,902.11
20	Eva B. Roberts		49.00		—o—	49.00	16,853.11	16,853.11
25	J. T. Harrell & C. E. Basham K-79 (Stephens Royalty)		10,028.00		—o—	10,028.00	6,825.11	6,825.11
26	Wichita General Hospital		95.90					
26	Mrs. H. H. Brown		30.00					
26	Jim Robinson		3.60		—o—	129.50	6,695.61	6,695.61
27	Cash		2,100.00		—o—	2,100.00	4,595.61	4,595.61
28	Eva B. Roberts		49.00		—o—	49.00	4,546.61	4,546.61
30	Deposit (8)	$1,235.99						
30	Deposit (8)	175.17		1,411.16				
30	Deposit (18) J. T. H. Dale Oil & Rfg. Co.			1,235.99				
30	Guy C. Raley		117.27					
30	M. H. Glover		10.00					
30	General Hospital		55.65					
30	Mrs. H. H. Brown		30.00		2,434.23		4,546.61	6,980.84
2- 1	W. R. Hyer, Tax Collector		112.44					
1	Eva Roberts		50.00		2,271.79		4,546.61	6,818.40
2	Deposit (7) 7,890 Trust Check #466 favor of G. W. Peckham, Voucher Notation Executive salary for Jan., 1926					400.00		
2	Deposit (7)			1,000.00				
2	Renfro Drug Company		6.95					
2	Tolowa		1,081.49					
2	Smith Drug Company		3.00					
2	Wotola		154.50					
2	J. T. Harrell & C. E. Basham (Stephens Royalty)		5,100.00		—o—	3,074.15	1,872.46	1,872.46

Analysis of G. W. Peckham's Commingled Account in the City National Bank, Wichita Falls, Texas.

Period of April 3, 1926, to May 4, 1926.

1926		Detail	Checks	Personal Funds Deposits	Balance	Checks	Trust Funds Deposits	Balance	Commingled Balance
4- 3	Balance at the beginning of business on April 3, 1926..				$2,420.55				$2,420.55
3	Deposit (9) (Trust Check #487 favor of G. W. Peckham, Voucher Notation: Salaries, Executive for the month of March)	$400.00					$400.00		
3	Deposit (9)	200.00		$200.00					
3	Mrs. H. H. Brown		$30.00						
3	Lesley Bros., Inc.		52.85						
3	Decorators		3.00						
3	B. L. Fain—⅛ Interest in Dry Hole in the N½ of N. E. ¼ & S. W. ¼ of S. E. ¼ Section 4,1S-8 W. Okla..		1,000.00						
3	Check Book		1.00						
3	Wichita Club		20.10						
3	City National Building		65.00		1,448.60			$400.00	1,848.60
6	Noble-Little Hardware Co.		19.60						
6	Munger Auto Company		48.45						
6	Golf Club		20.63						
6	Perkins-Timberlake		88.21		1,271.71			400.00	1,671.71
7	E. C. DeMontel		110.00						
7	Dr. Guest		32.00						
7	Phone Company		18.27						
7	Auto Storage Company		11.50		1,099.94			400.00	1,499.94
8	Eldora Bunnenburg		25.00						
8	Chas. Scribner & Sons		35.10		1,039.84			400.00	1,439.84
9	Earnest A. Cox		4.50		1,035.34			400.00	1,435.34
10	Elizabeth Billinger		20.00		1,015.34			400.00	1,415.34
14	Gulf Refining Company		16.92						
14	First National Bank——Burkburnett (Rental to 4-20-27 on Graves 20 acre lease)		20.00		978.42			400.00	1,378.42
16	Point Breeze Club		5.00						
16	Beauvis Typewriter Co.		3.50		969.92			400.00	1,369.92
17	Elizabeth Billinger		20.00		949.92			400.00	1,349.92
20	E. A. Cox		17.21						
20	E. C. DeMontel		13.00		919.71			400.00	1,319.71
24	Security National Bank		200.00						
24	Elizabeth Billinger		20.00		693.71			400.00	1,099.71
26	Deposit—Rentals			$4.38					
26	A. B. Maples, Agt.—Insurance Premium		624.40		79.69			400.00	479.69
27	Chas. E. Watson		65.43						

1926								
4- 3	Balance at the beginning of business on April 3, 1926							
3	Deposit (9) (Trust Check #487 favor of G. W. Peckham, Voucher Notation: Salaries, Executive for the month of March)	$400.00				$400.00		
3	Deposit (9)	200.00		$200.00				
3	Mrs. H. H. Brown		$30.00					
3	Lesley Bros., Inc.		52.85					
3	Decorators		3.00					
3	B. L. Fain—⅛ Interest in Dry Hole in the N½ of N. E. ¼ & S. W. ¼ of S. E. ¼ Section 4,1S-8 W. Okla.		1,000.00					
3	Check Book		1.00					
3	Wichita Club		20.10					
3	City National Building		65.00		1,448.60		$400.00	1,848.60
6	Noble-Little Hardware Co.		19.60					
6	Munger Auto Company		48.45					
6	Golf Club		20.63					
6	Perkins-Timberlake		88.21		1,271.71		400.00	1,671.71
7	E. C. DeMontel		110.00					
7	Dr. Guest		32.00					
7	Phone Company		18.27					
7	Auto Storage Company		11.50		1,099.94		400.00	1,499.94
8	Eldora Bunnenburg		25.00					
8	Chas. Scribner & Sons		35.10		1,039.84		400.00	1,439.84
9	Earnest A. Cox		4.50		1,035.34		400.00	1,435.34
10	Elizabeth Billinger		20.00		1,015.34		400.00	1,415.34
14	Gulf Refining Company		16.92					
14	First National Bank——Burkburnett (Rental to 4-20-27 on Graves 20 acre lease)		20.00		978.42		400.00	1,378.42
16	Point Breeze Club		5.00					
16	Beauvis Typewriter Co.		3.50		969.92		400.00	1,369.92
17	Elizabeth Billinger		20.00		949.92		400.00	1,349.92
20	E. A. Cox		17.21					
20	E. C. DeMontel		13.00		919.71		400.00	1,319.71
24	Security National Bank		200.00					
24	Elizabeth Billinger		20.00		699.71		400.00	1,099.71
26	Deposit—Rentals			$4.38				
26	A. B. Maples, Agt.—Insurance Premium		624.40		79.69		400.00	479.69
27	Chas. E. Watson		65.43					
27	Debit Advice		4.38		9.88		400.00	409.88
28	Texhoma		61.85		-0-	$51.97		348.03
29	Hines Oil Company		2.85		-0-		345.18	345.18
30	Mrs. T. T. Reese		50.00		-0-		295.18	295.18
5- 1	Elizabeth Billinger		20.00		-0-		275.18	275.18
4	Renfro Drug Company		5.25					
4	City National Bank (Rent on Deposit Box)		10.00					
4	Wichita Club		5.95					
4	City National Bldg. (May Rent)		65.00					
4	Keim Motor Company		1.50		-0-		187.48	187.48

Analysis of G. W. Peckham's Commingled Account in the City National Bank, Wichita Falls, Texas.

Period of August 2, 1926, to August 10, 1926.

1926	Detail	Personal Funds Checks	Personal Funds Deposits	Personal Funds Balance	Trust Funds Checks	Trust Funds Deposits	Trust Funds Balance	Commingled Balance
8- 2	Balance at beginning of business on August 2, 1926...			$419.09				$419.09
8- 2	Deposit (7)—Trust Check #523 payable to G. W. Peckham with voucher notation as follows: Executive Salary for Month of July, 1926					$400.00		
8- 2	Deposit (7)—Trust Check #525 payable to City National Bank with voucher notation as follows: Notes Payable—to apply on Note due 9-19-26 to Highland Irrigation Co., for land in fee					4,000.00		
8- 2	Cash	$50.00						
8- 2	Renfro Drug	1.75						
8- 2	E. E. Scannell (Check Missing)	46.95						
8- 2	E. E. Scannell (Check Missing)	179.19		141.20			$4,400.00	4,541.20
8- 3	Security Nat'l Bank	200.00						
8- 3	Jim Cassell	4.00		—o—	$ 62.80		4,337.20	4,337.20
8- 4	Armon Brown	100.00						
8- 4	Western Union	.71		—o—	100.71		4,236.49	4,236.49
8- 5	City Nat'l Bldg.	65.00						
8- 5	W. G. Mackeckney (Trees)	146.60						
8- 5	Wichita Club	2.00						
8- 5	Keim Motor Co.	5.05		—o—	218.65		4,017.84	4,017.84
3- 6	Wichita Clinic Hospital	45.00						
8- 6	Telephone Co.	12.60						
8- 6	Wichita Building & Loan	260.00		—o—	317.60		3,700.24	3,700.24
8- 7	Filling Station—Orient Gas Co.	6.12						
8- 7	Hines Oil Co.	9.71						
8- 7	Sharpe Bros.	1.05						
8- 7	Point Breeze Works	5.00						
8- 7	Wichita Floral Co.	6.00						
8- 7	Dr. L. I. Lucy	4.00		—o—	31.91		3,668.33	3,668.33
8- 9	Munger Auto Co.	39.40		—o—	39.40		3,628.93	3,628.93
8-10	Interest (Payment of Interest on Note #81324 of G. W. Peckham)	550.00		—o—	550.00		3,078.93	3,078.93

Analysis of G. W. Peckham's Commingled Account in the City National Bank, Wichita Falls, Texas.

November 20, 1926.

		Personal Funds				Trust Funds		Commingled
1926		Detail	Checks	Deposits	Balance	Checks	Deposits	Balance	Balance
11-20	Balance at the beginning of business on November 20, 1926				$6,850.65				$6,850.65
	Deposits—Trust Check #000—Voucher notation as follows: Royalties owned: Property #95 being 3/16th interest in the leasehold estate, 80 acres east half of Lot 10, North Anderson Ranch, S. P. Survey, Archer County, Texas	$5,000.00							
	Property #96: to apply on purchase of ¼ royalty on the southwest 60 acres of E. Polk land, abstract 717 of William Polk, Pre-emption Survey, Archer County, Texas, also ¼ of the 7/8ths leasehold estate on the west 40 acres of the same land	2,500.00					$7,500.00		
11-20	Mrs. H. H. Brown		$ 25.00						
11-20	H. G. Helgerson (Rent for December)		75.00						
11-20	City National Bank (Plummer Section 12, P. K. 21; Draft lease attached from First National Bank, Shamrock)		8,008.00						
11-20	City National Bank (Webb P. K. 15-Draft lease attached from First National Bank-Shamrock)		4,904.90		—o—	$6,162.25			1,337.35

Analysis of G. W. Peckham's Commingled Account in the City National Bank, Wichita Falls, Texas.

January 19, 1927.

1927		Detail	Personal Funds Checks	Personal Funds Deposits	Personal Funds Balance	Trust Funds Checks	Trust Funds Deposits	Trust Funds Balance	Commingled Balance
1-19	Balance at beginning of business on January 19, 1927..				$1,581.41				$1,581.41
1-19	Deposit—Trust Check #571 payable to the City Nat'l Bank with voucher notation as follows: Land Improvements: To apply on paving excess Strip Malborough addition						$2,000.00		
1-19	Yourselves—Pk-55 (Payment on Note 87506 of G. W. Peckham, Principal $2,500.00, Interest $6.12.....		$2,506.12						
1-19	Mrs. H. H. Brown		25.00		—o—	$949.71		$1,050.29	1,050.29

Analysis of G. W. Peckham's Commingled Account in the City National Bank, Wichita Falls, Texas.

March 16, 1927.

1927		Detail	Personal Funds Checks	Personal Funds Deposits	Personal Funds Balance	Trust Funds Checks	Trust Funds Deposits	Trust Funds Balance	Commingled Balance
3-16	Balance at beginning of business on March 16, 1927...				$1,274.42				$1,274.42
3-16	Deposit (7)	$200.00							
3-16	Deposit (7)	375.00							
3-16	Deposit (7)	7.00		$582.00					
3-16	Deposit—Trust Check #583 payable to the City National Bank with voucher notation as follows: Royalties owned—Property #96, last payment on purchase of ¼ of royalty on the S. W. 60 acres of E. Polk land, abstract 717 of William Polk Preemption Survey, Archer County, Texas. Also ¼ of the ⅞ leasehold estate on the W. 40 acres of the same land. This payment together with payments on checks Nos. 550 and 554 makes a total cost of $3,000.00 for the above interest.....						$301.82		
3-16	On Note (Payment on Note #85175 of G. W. Peckham)		$1,500.00						
3-16	Texas Electric Service Company (For Frigidaire)....		577.00		—o—	$220.58		$81.24	81.24

Analysis of G. W. Peckham's Commingled Account in the City National Bank, Wichita Falls, Texas.

Period of May 6, 1927, to May 9, 1927.

1927	Detail	Personal Funds Checks	Personal Funds Deposits	Personal Funds Balance	Trust Funds Checks	Trust Funds Deposits	Trust Funds Balance	Commingled Balance
5- 6	Balance at beginning of business on May 6, 1927.....			$64.48				$64.48
5- 6	Deposit (7)—Trust check #607 payable to B. L. Fain. Payee's name indorsed by G. W. Peckham and deposited by G. W. Peckham. Voucher notation as follows: Purchase of oil runs—to apply on purchase of $4,200.00 in oil runs due from Roxanna Petroleum Corp. of the J. T. Milner land—Wilbarger County. Purchase Price $3,000.00					$500.00		
5- 6	Henry Vaughan (Wheeler County Drilling Reports)..	$10.00						
5- 6	United Royalties (Rental Lot 6, Block 1462 Young County, Heatheely Chambers 475 acre sub.).....	40.00		14.48			$500.00	514.48
5- 7	Cash	75.00		-o-	$ 60.52		439.48	439.48
5- 9	Security Nat'l Bank	200.00						
5- 9	Perkins Timberlake Co. (Account)	37.53						
5- 9	Wichita Club	1.95						
5- 9	City National Bank (Rent on Deposit Box #927).....	10.00						
5- 9	Wichita Floral Co.	4.50						
5- 9	Wichita Falls Clinic Hospital	4.00		-o-	257.98		181.50	181.50

Analysis of G. W. Peckham's Commingled Account in the City National Bank, Wichita Falls, Texas.

Period October 15, 1927, to October 19, 1927.

1927	Detail	Personal Funds Checks	Personal Funds Deposits	Personal Funds Balance	Trust Funds Checks	Trust Funds Deposits	Trust Funds Balance	Commingled Balance
10-15	Balance at beginning of business on October 15, 1927..			$ 39.91				$ 39.91
10-15	Deposit (7)—Thomason "Us" Trust Check #650 payable to the City Nat'l Bank with voucher notation as follows: Notes Payable—to apply on money borrowed from City Nat'l Bank					$2,400.00		
10-15	Mrs. A. D. Ford	$ 25.00		14.91			$2,400.00	2,414.91
10-19	Orchid Shop, Inc.	165.65						
10-19	Telephone Co.	26.55						
10-19	On Note (Payment on Note #194 of G. W. Peckham)	520.00		—o—	$ 697.29			
10-19	On Note (Payment on Note #36 of the Wichita Royalty Co., Principal $1,076.00, Interest $260.00.....				1,336.00		366.71	366.71

Analysis of G. W. Peckham's Commingled Account in the City National Bank, Wichita Falls, Texas.

February 15, 1928.

1928	Detail	Personal Funds Checks	Personal Funds Deposits	Personal Funds Balance	Trust Funds Checks	Trust Funds Deposits	Trust Funds Balance	Commingled Balance
2-15	Balance at beginning of business on February 15, 1928			$ 75.93				$ 75.93
2-15	Deposit (7)—Plaintiff's Exhibit #146 being Cashier's Check #12328 issued by the Wichita State Bank & Trust Co. and payable to W. C. Duncan, indorsed payable to the order of G. W. Peckham for Bristow Royalty—W. C. Duncan—also indorsed by G. W. Peckham					$6,000.00		
2-15	Cox and Co.—Auto Repairs	$ 40.60						
2-15	De Montel & Sanford	331.00						
2-15	Cash (Traveling Expense)	100.00						
2-15	City National Bank (Payment on Wichita Royalty Co. Note #4558)				$3,485.33			
2-15	Note and Interest (Payment on Note #3331 of G. W. Peckham, Principal $510.00, Interest $3.33)	513.33		—o—	909.00		$1,605.67	1,605.67

Analysis of G. W. Peckham's Commingled Account in the City National Bank, Wichita Falls, Texas.

Period of July 9, 1928, to September 27, 1928.

		Detail	Personal Funds Checks	Personal Funds Deposits	Personal Funds Balance	Trust Funds Checks	Trust Funds Deposits	Trust Funds Balance	Commingled Balance
1928									
7- 9	Balance at beginning of business on July 9, 1928				$247.25			$247.25	
7- 9	Deposit (7) Trust check #727 payable to G. W. Peckham with voucher notation as follows: Executive salaries for month of June, 1928						$400.00		
7- 9	Deposit (7)			$1,500.00					
7- 9	Lesley Bros.		$ 5.85						
7- 9	Electric Light Co.		21.48						
7- 9	P. B. M. Co.		28.56		1,691.36			400.00	$2,091.36
7-10	Cash (Traveling Expense)		200.00						
7-10	J. P. & E. M. Sommerville		24.72						
7-10	Haley Drug Co.		8.03						
7-10	Whites Pharmacy		1.00						
7-10	R. O. Kenley		10.00		1,447.61			400.00	1,847.61
7-11	Shaphard—Crouch Co.		25.00						
7-11	Security Nat'l Bank		200.00		1,222.61			400.00	1,622.61
7-13	Phone Co.		18.54		1,204.07			400.00	1,604.07
7-13	Mrs. A. D. Ford		25.00		1,179.07			400.00	1,579.07
7-14	Co. Clerk—Archer Co.		1.00		1,178.07			400.00	1,578.07
7-20	Deposit (7)	$ 300.00							
	Deposit (7)	62.50		362.50					
7-20	Deposit (7)	2,500.00							
7-20	Deposit (7)	2,500.00		5,000.00					
7-20	Note & Interest (Payment on Note #10625 on G. W. Peckham, Principal $484.78 and Interest $9.00		493.78						
7-20	W. H. Peckham		3,100.00		2,946.79			400.00	3,346.79
7-21	Deposit (5)			450.00					
7-21	Mrs. A. D. Ford		25.00						
7-21	B. L. Fain		1,500.00		1,871.79			400.00	2,271.79
7-23	Martin Littrell		750.00						
7-23	T. C. Scales (Com. on Haytir)		250.00		871.79			400.00	1,271.79
7-24	B. L. Fain (Haytir Royalty)		925.00						
7-24	Cash		1.00		—o—	$54.21		345.79	345.79
7-31	Mrs. A. D. Ford		25.00		—o—	25.00		320.79	320.79
8- 2	City Nat'l Bldg.		65.00			65.00		255.79	255.79
8- 3	Deposit (7) Malborough Addition			300.00					
8- 3	Fritz Motor Co.		15.95						
8- 3	Point Breeze Boat Works		5.00						
8- 3	Clyde E. Taylor		1.00		278.05			255.79	533.84
8- 4	Lesley Bros.		1.25						
8- 4	Wichita Club		32.25						
8- 4	Payne Auto Storage		33.46						
8- 4	Mrs. A. D. Ford		25.00						

Analysis of G. W. Peckham's Commingled Account in the City National Bank, Wichita Falls, Texas.

Period of July 9, 1928, to September 27, 1928 (Cont'd).

1928	Detail	Personal Funds Checks	Personal Funds Deposits	Personal Funds Balance	Trust Funds Checks	Trust Funds Deposits	Trust Funds Balance	Commingled Balance
8- 4 Texas Electric Service Co.		$ 16.35		$ 169.74			$ 255.79	$ 425.53
8- 6 Municipal Gas Co.		2.53						
8- 6 Wichita Floral Co.		10.00		157.21			255.79	413.00
8- 7 Deposit (7)—Trust check #738 payable to G. W. Peckham with voucher notation as follows: Executive Salaries for Month of July, 1928				157.21		$ 400.00	655.79	813.00
8- 8 Wichita Falls Water Dept.		12.68						
8- 8 City Nat'l Bank (Cashier's Check to Mrs. G. W. Peckham)		200.00		—o—	$ 55.47		600.32	600.32
8-16 Phone Co.		16.05		—o—	16.05		584.27	584.27
8-20 Cash		1.00		—o—	1.00		583.27	583.27
8-21 Cash		.50		—o—	.50		582.77	582.77
8-29 Cash		100.00						
8-29 Cash		25.00		—o—	125.00		457.77	457.77
8-30 Deposit (W. H. Peckham)			$2,500.00					
8-30 Deposit (19)—J. T. H.—B. L. Fain			6,000.00					
8-30 Mrs. A. D Ford		75.00		8,425.00			457.77	8,882.77
8-31 Debit Advice—Telegram to Menard regarding Ck. 7940		.48		8,424.52			457.77	8,882.29
9- 1 Bevins Nat'l Bank		7,940.00		484.52			457.77	942.29
9-10 Deposit (10) McWhirter #1092 Texland Oil Co.	$3,242.50							
9-10 Deposit (10) McWhirter #1092 Bevins Nat'l Bank	1,297.00							
9-10 Deposit (10) McWhirter #1092 W. H. Peckham	4.75		4,544.25					
9-10 Deposit (10) McWhirter #1092 Trust Check #747 payable to G. W. Peckham with voucher notation as follows: Salaries-Executive for Month of August 1928	400.00					400.00		
9-10 Brit Cranfill		205.00						
9-10 City Nat'l Bldg.		65.00		4,758.77			857.77	5,616.54
9-11 Security Nat'l Bank		200.00						
9-11 Wichita Club		49.05						
9-11 W. B. McClurkan		8.20						
9-11 Phone Co.		15.50						
9-11 Electric Light Co.		9.60		4,476.42			857.77	5,334.19
9-12 Mrs. H. H. Brown		25.00						
9-12 W. H. Peckham (Refund on Menard Royalty)		68.00		4,383.42			857.77	5,241.19
9-13 Deposit (10) Geo. B. Ray Inv.			5,400.00					
Collector of Internal Revenue		5.58						
9-13 Geo. B. Ray (Refund on Menard Royalty)		666.25						
9-13 Collector of Internal Revenue		5.58						

Analysis of G. W. Peckham's Commingled Account in the City National Bank, Wichita Falls, Texas.

Period of July 9, 1928, to September 27, 1928 (Cont'd).

1928		Detail	Personal Funds Checks	Personal Funds Deposits	Personal Funds Balance	Trust Funds Checks	Trust Funds Deposits	Trust Funds Balance	Commingled Balance
9-13	Lesley Bros.		$ 1.60						
9-13	Payne Auto Storage		16.70						
9-13	Duffie & Lufburrough (Your Part of Geo. B. Ray 5403 Note on Menard County)		2,700.00						
9-13	Geo. B. Ray		1,169.00						
9-13	Robt. W. Peckham		175.00		$5,043.71			$857.77	$5,901.48
9-14	C. R. Cooper (For 80 Acre lease Menard Co.)		3,040.00						
9-14	Security N. Bank		868.50		1,135.21			857.77	1,992.98
9-15	City Water Dept.		3.98						
9-15	Mrs. H. H. Brown		25.00		1,106.23			857.77	1,964.00
9-18	Point Breeze Boat Works—Storage for August		5.00		1,101.23			857.77	1,959.00
9-25	Deposit (10)			$1,800.00					
9-25	S. A. Cochran (Com. on Menard Royalty sold to Shaw)		600.00		2,301.23			857.77	3,159.00
9-26	Deposit			5,800.00					
9-26	S. A. Cochran (Bal. Com. on Menard Lease sold to Shaw)		150.00						
9-26	E. L. Mears		100.00		7,851.23			857.77	8,709.00
9-27	Deposit (7) (W. R. Co.) Trust check #752 payable to the City Nat'l Bank with voucher notation as follows: Interest Expense—Interest on Notes held by City Nat'l Bank						$424.66		
9-27	Mrs. H. H. Brown		25.00						
9-27	Bravins Hotel		31.35						
9-27	B. L. Fain (Your Part 2700 paid by Ray on Menard Lease ½ in $920.00)		1,350.00						
9-27	B. L. Fain (Com. on Harper Royalty Menard County)		160.00						
9-27	B. L. Fain (Sale of Menard Lease)		29.00						
9-27	B. L. Fain (Profit on Menard Lease sold to Shaw)		965.00						
9-27	B. L. Fain (Com. on Echert Royalty)		648.50						
9-27	B. L. Fain (Com. on Menard County)		487.00						
9-27	Yourselves (Traveler's Checks)		1,005.00						
9-27	City Nat'l Bank (Credit on Wichita Royalty Note #11167)					$424.66			
9-27	On Note (Payment on Note #10626 of G. W. Peckham)		3,163.78		—o—	13.40		844.37	844.37

Analysis of G. W. Peckham's Commingled Account in the City National Bank, Wichita Falls, Texas.

Period of December 31, 1928, to January 12, 1929.

			Personal Funds			Trust Funds		
1928		Detail	Checks	Deposits	Balance	Checks	Deposits	Balance	Commingled Balance
12-31	Balance at beginning of business on December 31, 1928				$ 165.30				$ 165.30
12-31	Deposit (7)—Trust Check #775 payable to G. W. Peckham with voucher notation as follows: Salaries Executive for the Month of December, 1928						$400.00		
12-31	Cash		$ 5.00		160.30			$400.00	560.30
1929									
1- 2	Mrs. H. H. Brown		25.00						
1- 2	Cash		75.00		60.30			400.00	460.30
1- 3	Security Nat'l Bank		100.00		-o-	$ 39.70		360.30	360.30
1- 4	Deposit (7) Robert W. Peckham			$2,800.00					
1- 4	Texas Electric Service Company		13.35						
1- 4	Williams-Cox Co.		32.55						
1- 4	Cash		200.00		2,554.10			360.30	2,914.40
1- 5	E. E. Scannell (Check Missing)		150.00						
1- 5	Lesley Bros. Inc.		.75						
1- 5	Whites Pharmacy		5.15						
1- 5	Lincoln National Life Gas Co.		208.47						
1- 5	Western Union		2.31						
1- 5	City Nat'l Bldg.		55.00						
1- 5	Wichita Club		23.85						
1- 5	Payne Auto Storage		34.50		2,074.07			360.30	2,434.37
1- 7	Mrs. H. H. Brown		25.00						
1- 7	Riley Auto Service		3.15		2,045.92			360.30	2,406.22
1- 8	Great Southern Ins. Co.		125.25						
1- 8	City of Wichita Falls, Water Dept.		1.97						
1- 8	Panhandle Tire Co.		1.25		1,917.45			360.30	2,277.75
1-10	J. P. & E. M. Sommerville		24.72		1,892.73			360.30	2,253.03
1-11	Security Nat'l Bank		100.00						
1-11	Southwestern Bell Telephone Co.		20.90		1,771.83			360.30	2,132.13
1-12	Deposit—1396 McWhirter	$75.00							
1-12	Deposit	7.50							
1-12	Deposit	2.16		84.66					
1-12	Municipal Gas Co.		17.38						
1-12	Wichita Falls Clinic Hospital		60.00						
1-12	On Note (Interest $413.33) (Payment on note #15363 of G. W. Peckham, Principal $1,639.57, Interest $373.76		2,013.33		-o-	234.22		126.08	126.08

Analysis of G. W. Peckham's Commingled Account in the City National Bank, Wichita Falls, Texas.

Period of March 6, 1926, to July 23, 1926.

1926		Detail	Personal Funds Checks	Personal Funds Deposits	Personal Funds Balance	Trust Funds—Marlborough Checks	Trust Funds—Marlborough Deposits	Trust Funds—Marlborough Balance	Commingled Balance
3- 6	Balance at beginning of business on March 6, 1926				$ 225.20				$225.20
6	Deposit (8) Trust check #478 payable to City Nat'l Bank, Marlborough						$17,623.70		
6	J. T. Harrell & C. E. Basham, Stephens Royalty		$5,060.00		—	$4,834.80		$12,788.90	12,788.90
8	Skidmon Dairy		12.80						
8	Cash		200.00		—	212.80		12,576.10	12,576.10
9	W. H. Peckham—Marlborough		11,811.85		—	11,811.85		764.25	764.25
10	Mrs. H. H. Brown		30.00		—	30.00		734.25	734.25
11	Auto Storage Co.		20.02						
11	Telephone Co.		10.90			30.92		703.33	703.33
12	Deposit (19) Escrow 2669 W. S. A.	$1,500.00							
12	Less Note of J. G. A.	251.00							
		1,249.00							
	Less Credit of J. G. A.	431.00		$818.00					
12	Munger Auto Co.		6.00						
12	Wichita Falls Bldg. and Loan		250.00		562.00			703.33	1,265.33
13	Federal Tire Co.		3.10						
13	W. H. Peckham (For release of Welch contract on Marlborough addition)		100.00						
13	E. C. De Montel		2.90						
13	Mrs. H. H. Brown		30.00						
13	Point Breeze Club		5.00		421.00			703.33	1,124.33
16	Cash		400.00		21.00			703.33	724.33
17	Deposit (4) 4472			400.00					
17	Gulf Refining Co.		8.07		412.93			703.33	1,116.26
20	Mrs. H. H. Brown		30.00						
20	Collector of Internal Revenue, Wife ¼		33.58						
20	Collector of Internal Revenue, Husband ¼		33.58		315.77			703.33	1,019.10
22	Shaphard-Crouch Co.		47.50		268.27			703.33	971.60
25	Charity Birdman		10.00		258.27			703.33	961.60
27	Clifford Maers		2.90						
27	Mrs. H. H. Brown		30.00		225.37			703.33	928.70
29	E. E. Scannell		400.00						
29	J. P. & E. M. Sommerville		24.72		—	199.35		503.98	503.98
31	Deposit us (7)—Trust check #485 Payable to City Nat'l Bank—Marlborough						7,500.00	8,003.98	8,003.98
4- 1	Rev. L. G. Snell		5.00						
1	Security N. Bank		200.00						
1	J. T. Harrell & G. W. Peckham—Indorsed J. T. Harrell & C. E. Basham		5,087.00		—	5,292.00		2,711.98	2,711.98

Analysis of G. W. Peckham's Commingled Account in the City National Bank, Wichita Falls, Texas.

Period of March 6, 1926, to July 23, 1926 (Cont'd).

1926		Detail	Personal Funds Checks	Personal Funds Deposits	Personal Funds Balance	Trust Funds—Marlborough Checks	Trust Funds—Marlborough Deposits	Trust Funds—Marlborough Balance	Commingled Balance
4- 2	Jim Cassell		$ 3.45						
2	Wichita Falls Bldg. and Loan		250.00						
2	Renfro Drug Co.		5.50						
2	Dr. Thornburg		15.00						
2	W. B. McClurkan		17.48		-0-	$291.43		$2,420.55	$2,420.55
3	Deposit (9) Trust check #487 favor G. W. Peckham—Salary	$400.00							
3	Deposit (9)	200.00		$600.00					
3	Mrs. H. H. Brown		30.00						
3	Lesley Bros. Inc.		52.85						
3	Decorators		3.00						
3	B. L. Fain—1/8 interest in dry hole in N 1/2 of NE 1/4 of SW 1/4 of SE1/4 Sec. 4-1S-8W. Okla.		1,000.00						
3	Check Book		1.00						
3	Wichita Club		20.10						
3	City Nat'l Bldg.		65.00		-0-	571.95		1,848.60	1,848.60
6	Noble-Little Hdw. Co.		19.60						
6	Munger Auto Co.		48.45						
6	Golf Club		20.63						
6	Perkins Timberlake		88.21		-0-	176.89		1,671.71	1,671.71
7	E. C. De Montel		110.00						
7	Dr. Guest		32.00						
7	Phone Co.		18.27						
7	Auto Storage Co.		11.50		-0-	171.77		1,499.94	1,499.94
8	Eldora Bunnenburg		25.00						
8	Chas. Scribner Sons		35.10		-0-	60.10		1,439.84	1,439.84
9	Earnest A. Cox		4.50		-0-	4.50		1,435.34	1,435.34
10	Elizabeth Bellengers		20.00		-0-	20.00		1,415.34	1,415.34
14	Gulf Refining Co.		16.92						
14	First Nat'l Bank, Burkburnett—Rental to 4-20-27 on Groves 20 acre lease		20.00		-0-	36.92		1,378.42	1,378.42
16	Point Breeze Club		5.00						
16	Branvais Typewriter Co.		3.50		-0-	8.50		1,369.92	1,369.92
17	Elizabeth Bellenger		20.00		-0-	20.00		1,349.92	1,349.92
20	E. A. Cox		17.21						
20	E. C. De Montel		13.00		-0-	30.21		1,319.71	1,319.71
24	Security N. Bank		200.00						
24	Elizabeth Bellenger		20.00		-0-	220.00		1,099.71	1,099.71
26	Deposit—Lease Rentals			4.38					
26	A. B. Maples—Agent, Insurance Premium		624.40		-0-	620.02		479.69	479.69

Analysis of G. W. Peckham's Commingled Account in the City National Bank, Wichita Falls, Texas.

Period of March 6, 1926, to July 23, 1926 (Cont'd).

			Personal Funds			Trust Funds—Marlborough			
1926		Detail	Checks	Deposits	Balance	Checks	Deposits	Balance	Commingled Balance
4-27	Chas. E. Watson		$ 65.43						
27	Debit Advice—Rentals		4.38		-o-	$ 69.81		$ 409.88	$ 409.88
28	Texhoma		61.85		-o-	61.85		348.03	348.03
29	Hines Oil Co.		2.85		-o-	2.85		345.18	345.18
30	Mrs. T. T. Reese		50.00		-o-	50.00		295.18	295.18
5- 1	Elizabeth Bellinger		20.00		-o-	20.00		275.18	275.18
4	Renfro Drug Co.		5.25						
4	City Nat'l Bank—Rent on Deposit Box		10.00						
4	Wichita Club		5.95						
4	City Nat'l Bldg.—May Rent		65.00						
4	Keim Motor Co.		1.50		-o-	87.70		187.48	187.48
5	Deposit (9)	$100.00							
5	Deposit (9)	10.00		$ 110.00					
5	Perkins Timberlake		29.39						
5	Elizabeth Bellenger		20.00		$ 60.61			187.48	248.09
6	Phone Co.		21.60						
6	Automobile Storage Co.		18.60		20.41			187.48	207.89
7	Cato Tire Co.		1.25		19.16			187.48	206.64
8	Deposit (7)	400.00							
8	Deposit (7) Security Nat'l Bank	600.00		1,000.00					
8	Wichita Falls Clinic Hospital		4.00		1,015.16			187.48	1,202.64
11	Wichita Falls Building and Loan		250.00						
11	Point Breeze Club		15.00		750.16			187.48	937.64
11	Greever Wynne & Maer—Insurance on Ford Coupe		11.90						
11	Edna Bunnenburg		25.00		713.26			187.48	900.74
14	Deposit (9)	150.00							
14	Deposit (9)	208.62							
14	Deposit (9)	17.24		375.83					
14	Security Nat'l Bank		200.00						
14	James Bros.		160.00		729.09			187.48	916.57
15	Gulf Refining Company		8.30						
15	Elizabeth Bellenger		20.00						
15	Interest (Payment of interest on note #77754 of G. W. Peckham)		550.00						
15	Rest Cottage Association		5.00		145.79			187.48	333.27
18	E. C. De Montel and W. H. Sanford		5.00		140.79			187.48	328.27

4-27	Chas. E. Watson		$ 65.43						
27	Debit Advice—Rentals		4.38		—o—	$ 69.81		$ 409.88	$ 409.88
28	Texhoma		61.85		—o—	61.85		348.03	348.03
29	Hines Oil Co.		2.85		—o—	2.85		345.18	345.18
30	Mrs. T. T. Reese		50.00		—o—	50.00		295.18	295.18
5- 1	Elizabeth Bellinger		20.00		—o—	20.00		275.18	275.18
4	Renfro Drug Co.		5.25						
4	City Nat'l Bank—Rent on Deposit Box		10.00						
4	Wichita Club		5.95						
4	City Nat'l Bldg.—May Rent		65.00						
4	Keim Motor Co.		1.50		—o—	87.70		187.48	187.48
5	Deposit (9)	$100.00							
5	Deposit (9)	10.00		$ 110.00					
5	Perkins Timberlake		29.39						
5	Elizabeth Bellenger		20.00		$ 60.61			187.48	248.09
6	Phone Co.		21.60						
6	Automobile Storage Co.		18.60		20.41			187.48	207.89
7	Cato Tire Co.		1.25		19.16			187.48	206.64
8	Deposit (7)	400.00							
8	Deposit (7) Security Nat'l Bank	600.00		1,000.00					
8	Wichita Falls Clinic Hospital		4.00		1,015.16			187.48	1,202.64
11	Wichita Falls Building and Loan		250.00						
11	Point Breeze Club		15.00		750.16			187.48	937.64
11	Greever Wynne & Maer—Insurance on Ford Coupe		11.90						
11	Edna Bunnenburg		25.00		713.26			187.48	900.74
14	Deposit (9)	150.00							
14	Deposit (9)	208.62							
14	Deposit (9)	17.24		375.83					
14	Security Nat'l Bank		200.00						
14	James Bros.		160.00		729.09			187.48	916.57
15	Gulf Refining Company		8.30						
15	Elizabeth Bellenger		20.00						
15	Interest (Payment of interest on note #77754 of G. W. Peckham)		550.00						
15	Rest Cottage Association		5.00		145.79			187.48	333.27
18	E. C. De Montel and W. H. Sanford		5.00		140.79			187.48	328.27
20	Deposit—Trust check #503 payable to G. W. Peckham, Marlborough						$3,000.00		
20	Cash		300.00						
20	Marlborough Addition		2,000.00		—o—	2,159.21		1,028.27	1,028.27
22	Elizabeth Bellenger		20.00		—o—	20.00		1,008.27	1,008.27
24	C. E. Basham		100.00		—o—	100.00		908.27	908.27
25	Oil Review		10.00		—o—	10.00		898.27	898.27

Analysis of G. W. Peckham's Commingled Account in the City National Bank, Wichita Falls, Texas.

Period of March 6, 1926, to July 23, 1926 (Cont'd).

			Personal Funds			Trust Funds—Marlborough			Commingled
	Detail	Checks	Deposits	Balance	Checks	Deposits	Balance	Balance
1926								
5-28	A. B. Maples, Agent	$ 624.40						
28	Security Mutual Aid Association	2.50		-o-	$ 626.90		$271.37	$ 271.37
29	Deposit (8) Trust check #505—Salary		$400.00					
29	Deposit		56.25					
29	Elizabeth Bellenger	20.00		$ 436.25			271.37	707.62
6- 1	McClurkan & Co.	189.90		246.35			271.37	517.72
2	Deposit (8 B) Trust check #507—City Nat'l Bank—Marlborough					$1,500.00		
2	City Nat'l Bldg.	65.00						
2	Marlborough Addition				1,500.00			
2	McClurkan & Co.	21.00		160.35			271.37	431.72
3	E. E. Scannell	79.09						
3	Keim Motor Co.	6.75						
3	Wichita Club	8.50						
3	Wichita Falls Building and Loan	40.00		25.81			271.37	297.18
4	Security Nat'l Bank	150.00						
4	City Tire Co.	3.25						
4	J. E. Duncan	2.50						
4	Cash	5.00						
4	P. B. M.	86.25						
4	Wichita Floral Co.	40.00		-o-	261.19		10.18	10.18
5	Deposit (8)		5,670.70					
5	Elizabeth Bellenger	20.00		5,650.70			10.18	5,660.88
7	L. I. Lucey	3.00						
7	Malborough Addition (split	$1,000.00)	989.82		4,657.88		10.18	-o-	4,657.88
8	Renfro Drug Co.	2.54						
8	Perkins Timberlake	33.81						
8	Point Breeze Boat Works	5.00						
8	Auto Storage Co.	15.30						
8	B. L. Fain	1,500.00						
8	Phone Co.	12.25		3,088.98			-o-	3,088.98
9	Munger Auto Co.	48.95						
9	Wichita Falls Clinic Hospital	16.00		3,024.03			-o-	3,024.03
10	Hines Oil Co.	21.91						
10	Collector of Internal Revenue	33.58						
10	Collector of Internal Revenue	33.58						
10	Cash	100.00		2,834.96			-o-	2,834.96
11	Deposit (8) H. H. Roberts		50.00					
11	H. H. Roberts—Plans on House	100.00		2,784.96			-o-	2,784.96
12	Deposit (7)	5,000.00						
12	Deposit (7)	5,000.00	10,000.00					
12	R. I. Fain	18.75						

		Detail	Personal Funds Checks	Personal Funds Deposits	Personal Funds Balance	Trust Funds—Marlborough Checks	Trust Funds—Marlborough Deposits	Trust Funds—Marlborough Balance	Commingled Balance
1926									
5-28	A. B. Maples, Agent		$ 624.40						
28	Security Mutual Aid Association		2.50		—o—	$ 626.90		$271.37	$ 271.37
29	Deposit (8) Trust check #505—Salary			$400.00					
29	Deposit			56.25					
29	Elizabeth Bellenger		20.00		$ 436.25			271.37	707.62
6- 1	McClurkan & Co.		189.90		246.35			271.37	517.72
2	Deposit (8 B) Trust check #507—City Nat'l Bank—Marlborough						$1,500.00		
2	City Nat'l Bldg.		65.00						
2	Marlborough Addition					1,500.00			
2	McClurkan & Co.		21.00		160.35			271.37	431.72
3	E. E. Scannell		79.09						
3	Keim Motor Co.		6.95						
3	Wichita Club		8.50						
3	Wichita Falls Building and Loan		40.00		25.81			271.37	297.18
4	Security Nat'l Bank		150.00						
4	City Tire Co.		3.25						
4	J. E. Duncan		2.50						
4	Cash		5.00						
4	P. B. M.		86.25						
4	Wichita Floral Co.		40.00		—o—	261.19		10.18	10.18
5	Deposit (8)			5,670.70					
5	Elizabeth Bellenger		20.00		5,650.70			10.18	5,660.88
7	L. I. Lucey		3.00						
7	Malborough Addition	(split $1,000.00)	989.82		4,657.88		10.18	—o—	4,657.88
8	Renfro Drug Co.		2.54						
8	Perkins Timberlake		33.81						
8	Point Breeze Boat Works		5.00						
8	Auto Storage Co.		15.30						
8	B. L. Fain		1,500.00						
8	Phone Co.		12.25		3,088.98			—o—	3,088.98
9	Munger Auto Co.		48.95						
9	Wichita Falls Clinic Hospital		16.00		3,024.03			—o—	3,024.03
10	Hines Oil Co.		21.91						
10	Collector of Internal Revenue		33.58						
10	Collector of Internal Revenue		33.58						
10	Cash		100.00		2,834.96			—o—	2,834.96
11	Deposit (8) H. H. Roberts			50.00					
11	H. H. Roberts—Plans on House		100.00		2,784.96			—o—	2,784.96
12	Deposit (7)	5,000.00							
12	Deposit (7)	5,000.00		10,000.00					
12	B. L. Fain		18.75						
12	Eldora Bunnenburg		25.00						

Analysis of G. W. Peckham's Commingled Account in the City National Bank, Wichita Falls, Texas.

Period of March 6, 1926, to July 23, 1926 (Cont'd).

		Personal Funds			Trust Funds—Marlborough			Commingled
1926	Detail	Checks	Deposits	Balance	Checks	Deposits	Balance	Balance
6-12	Wichita Building and Loan	$ 250.00						
12	Elizabeth Bellenger	20.00		$12,471.21			-o-	$12,471.21
15	Continental State Bank—Rising Star	7,500.00						
15	Cash	1,000.00						
15	C. E. Rodgers—Rentals on Shackelford County Lease	20.75		3,950.46			-o-	3,950.46
16	Deposit (7) Trust check #510 payable to City Nat'l Bank—Marlborough					$4,500.00		
16	A. B. Maples, Agent	292.20						
16	E. E. Scannell	974.15		2,684.11			$4,500.00	7,184.11
17	E. C. De Montel & W. H. Sanford	5.00		2,679.11			4,500.00	7,179.11
18	C. I. Francis—Costs in Shamrock Oil Co. Case	101.50						
18	Cashion Check	100.00		2,477.61			4,500.00	6,977.61
19	Marlborough Addition				$4,500.00			
19	Elizabeth Bellenger	20.00		2,457.61			-o-	2,457.61
21	Security Nat'l Bank	190.00		2,267.61			-o-	2,267.61
22	American Legion	1.00		2,266.61			-o-	2,266.61
23	L. E. Whithand & Co.—First Installment Paving Lots 11-12-13 & 14 Block 44A Highland Addition	241.20		2,025.41			-o-	2,025.41
24	Gulf Refining Co.	9.40		2,016.01				2,016.01
26	Deposit (6)		$123.10					
26	Deposit (6)		500.00					
26	Deposit (6)		57.97					
26	Deposit (6)		1.50					
			$682.57					
26	Elizabeth Bellenger	25.00		2,673.58			-o-	2,673.58
28	E. E. Scannell	47.19						
28	H. C. Thurman	50.00		2,576.39			-o-	2,576.39
30	E. E. Scannell	821.97		1,754.42			-o-	1,754.42
7- 1	J. T. & E. M. Sommerville	24.72						
1	W. H. Peckham	29.40		1,700.30			-o-	1,700.30
2	Security Nat'l Bank	200.00						
2	Nunn Electric Co.	89.84		1,410.46			-o-	1,410.46
3	Rentro Drug Co.	5.89						
3	Auto Tire Co.	7.10						
3	City Nat'l Bldg.	65.00						
3	Perkins Timberlake Co.	18.16		1,314.31			-o-	1,314.31
6	Deposit (7) Trust check #512 payable to G. W. Peckham—Salary		400.00					
6	Deposit (7)		42.00					
			442.00					
6	Cash	10.00						
6	Ray-Featherstone Oil Co.—My part of rentals on 20 acres of Vernon Lease	5.00						

Analysis of G. W. Peckham's Commingled Account in the City National Bank, Wichita Falls, Texas.

Period of March 6, 1926, to July 23, 1926 (Cont'd).

1926		Detail	Personal Funds Checks	Personal Funds Deposits	Personal Funds Balance	Trust Funds—Marlborough Checks	Trust Funds—Marlborough Deposits	Trust Funds—Marlborough Balance	Commingled Balance
7- 6	Wichita Falls Golf and Country Club		$ 20.63						
6	Elizabeth Bellenger		25.00						
6	Wichita Club		19.25						
6	Western Union		2.54		$1,673.89			-o-	$1,673.89
7	Sharpe Bros.		101.30						
7	Hines Oil Co.		30.13						
7	Cash		1.50						
7	Noble—Little Hdw. Co.		9.00						
7	Phone Co.		14.20		1,517.76			-o-	1,517.76
8	Munger Auto Co.		33.75						
8	P. B. M. Co.		50.25						
8	Wichita Falls Clinic Hospital		12.00		1,421.76			-o-	1,421.76
9	Wichita Building and Loan		260.00						
9	Orient Petroleum Co.		3.15		1,158.61			-o-	1,158.61
10	Elizabeth Bellenger		25.00		1,133.61				1,133.61
12	Point Breeze Boat Works		5.00						
12	Eldora Bunnenburg		25.00		1,103.61			-o-	1,103.61
15	Deposit (7) Trust check #519 favor of City Nat'l Bank, Marlborough						$1,000.00		
15	Landon Hill Co.		10.00		1,093.61			$1,000.00	2,093.61
16	Cash		50.00		1,043.61			1,000.00	2,043.61
17	Elizabeth Bellenger		25.00		1,018.61			1,000.00	2,018.61
19	E. C. De Montel & Sanford (On McCullough lawsuit)		19.00						
19	Deposit—Return J. Moose Permit			$100.00	1,099.61			1,000.00	2,099.61
22	City Nat'l Bank		53.12		1,046.49			1,000.00	2,046.49
23	Deposit (7) 7424	$ 11.27							
23	Deposit (7)	138.00		149.27					
23	Texas Highway Association		15.00						
23	Malborough Addition					$1,000.00			
23	Cash		50.00		1,130.76			-o-	1,130.76

2013 Cross Examination.

By Mr. Humphrey:

I have been working on this matter between two and three weeks. I have had the twelve volumes of testimony which have been taken, I have had the records of the Wichita Royalty Company, photostatic copies of the bank statement, deposition of Mr. Deaton, tabulating all of Mr. Peckham's personal checks—that is all of the records I remember right now. I had also the work that Mr. Sheppard had done, and worked from those, after I verified them. I did a little work on this case a couple of years ago, made an analysis at that time. I made the statement which you now show me, attached to the brief of the Wichita Royalty Company, I don't recall the theory I used then, two years ago. I considered at that time that the amount of trust funds in Mr. Peckham's commingled or current account, at the time of which payment to the bank is determinable by charging his aggregate of personal deposits for the period shown to the trust fund deposit, and the bank payment with his aggregate withdrawals during such period, before charging the trust deposits with any of such withdrawals. I thought that theory was correct at the time I wrote it, it was my opinion. As to whether I used the correct theory on August 12, 1935, that involves a question of law, and I am unable to say. In this report that I have offered in evidence at this time, I use the principle of applying personal disbursements to the personal funds, as far as they would go and the balance to trust funds, and I think I used the same

2014 theory there two years ago, used the personal funds as far as they would go, I believe that is the principle I used in each report. In my judgment I used the same principle in both analysis. I used the method in this case to try to definitely trace trust funds and personal funds. I have taken the trust deposit and applied against it all trust withdrawals and taken the personal funds and charged against it all personal

withdrawals, with the definite idea in mind to dissimilate the two funds. I have not used the minimum balance rule, I have identified personal and trust all the way through. I think I understand what minimum balance rule is, as an accountant. I have not used the rule as laid down in the case of Maryland Casualty Company versus City National Bank, 29 F (2) 262; I have used the method of definitely identifying and carrying through both personal and trust items. In the items that are in question, I have, from the transactions beginning in 1923, and continuing up to the death of Mr. Peckham, to actually trace the trust funds that actually went to his account, and the application of them, and the personal funds that went to his account, and the application of them. I have done that with reference to the items in question, for each of those periods, and I call penetrations. Those were the items that were complained of in the cross action and the items which I was requested to look into. I was not requested to make a survey or a picture or a report of the entire case as to the City National Bank from the time Peckham became trustee, but just the specific item, my
2015 report does not undertake to show the entire transaction. I never made an entire audit of the affairs of the company, I only examined into the specific transaction. I would not undertake to testify that there was any actual shortage between George Peckham and the Royalty Company as a whole. If I were going to be able to make a stated account, from the first day to the last, it would be necessary to comprehend the whole picture. These transactions I have were picked out through the entire items, specific items, that my attention was called to. For instance, pages 1993 and 1994, covers only a period of a month and two days. The Grimshaw royalties covers only a short time, as does the Marlborough, I only investigated the period complained of, and the ones I was specifically asked to investigate. My report does not show the state of the account between Mr. Peckham and the City National

Bank or the Royalty Company and the City National Bank. I would not call my report an audit. This is a statement of facts as I have gathered them from the evidence on specific items on which I was requested to examine into.

I made the statement on pages 1936 and 1937, that banks and bankers frequently enquired into the purpose of a loan, or what is to be done with the proceeds. I made that statement to show the ultimate disposition of the loan. I did not see in the record any statement which Mr. Peckham made as to what he expected to do with the money, that is my statement, and I think there is evidence in the record that banks and bankers
2016 frequently inquire into the ultimate use of a loan, I don't know whether there was any inquiry as to these particular loans or not. The connection that had with me, was that they knew they were going to get some of this money back or they would not have made this loan—that is my conclusion or opinion that Mr. Harrell and Mr. Basham had an idea they were going to get some of this money back in payment of their account, so they could pay the bank what they were owing. I do not say that Mr. Harrell profited by this money that he loaned Mr. Peckham, I said they got some money back out of the proceeds of the loan—Harrell and Basham got some money back out of the proceeds of this $25,000.00 loan—I refer to the payment of Harrell and Basham in the Stephens Royalty that they sold George Peckham, they received on January 25, $10,028.00 from G. W. Peckham's commingled account, his personal account, in which he placed trust funds. The account was carried in the name of G. W. Peckham on the bank's records, without any indicia or evidence that anybody else had any money in it except Mr. Peckham—I call that a commingled account.

I wrote the biggest part of this report, and Mr. Scannell and Mr. Sheppard and Mr. Rogers all worked on it all the way around, Judge Rogers wrote part of it and I wrote part, and Mr. Scannell helped me with part of it,

I examined all of the report and checked all the references. I am a Certified Public Accountant. I wrote the following statement, "G. W. Peckham caused his trust books to show the Wichita Royalty Company's acquisition of half interest in the Marlborough Addition for a total consideration of $49,000.00. We all worked on it. I had not signed the report, but I will sign it, I am satisfied with all the facts. Defendant's Exhibit 186 is divided into periods, the first episode is January, February and March, 1926. The first statement is January 1, 1926, is that G. W. Peckham and J. T. Harrell were good friends, and I will say that the records so indicate. I don't suppose it would make any difference whether they were friends or enemies, as to the state of this account, but I don't think that unknown persons would have so much business with each other. In this statement I only picked out the facts as complained of in the cross action and as requested by Mr. Scannell and Mr. Rogers. This report is not for the purpose of stating any definite item as to what one might owe the other, I picked out specific items and examined into them. I think the records show that they were jointly interested in some New Mexico leases, Mr. Peckham issued Mr. Harrell a check on June 24, 1925. I don't recall whether there is any claim that Mr. Harrell or the City National Bank owe the Wichita Royalty Company anything for that transaction or not. I do not recall that the pleadings complained of anything Mr. Harrell owed the bank. The statement there that Mr. Harrell was indebted to the bank on January 1, 1926, in the sum of $7,500.00, is made for the purpose of showing that Mr. Harrell did receive some of this money over here, as per some of these schedules, and later paid that specific money on his debt to the bank. It is not my purpose by making that statement to create the inference that Mr. Harrell loaned Mr. Peckham $25,000.00 for the Wichita Royalty Company in order for Harrell to pay his debt to the bank, I do not say

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that in this report. I did not undertake to determine whether the royalty company owed Peckham any money.

On page 1952, of Exhibit 186, is the following, "A mineral deed with the grantee's name in blank, dated 14th of October, 1925, was attached to a draft drawn on G. W. Peckham for $2,500.00 which G. W. Peckham paid by check dated October 17, 1925," we all worked on that statement, I think that is what Mr. Carsons says. I saw the photostatic copy of the Exhibits on it, anyway, that is my recollection of the record, but I will look it up further. I have seen the deed, and there is some testimony and one of these checks regarding it. If I have misquoted the record in that regard, I will correct it. I have charged George Peckham with this $2,500.00, and consequently the City National Bank with $2,500.00. I have included in a running statement the trust fund check which George Peckham passed—in his statement there is the amount which would show it was deposited to his credit in the City National Bank and subsequent statement shows the amount. When I said C. A. Rogers testified the property was condemned, that was my understanding from Mr. Rogers and Mr. Scannell. Mr. C. A. Rogers' testimony has not been written up—I mean Guy Rogers. I think that I show that of this $5,500.00 that George Peckham actually paid back into the treasury of the company, $1,-500.00, I did not examine property No. 82. I would not say that I would mean to infer from this statement that Property No. 81, Callahan Royalty was condemned at the time the Wichita Royalty Company paid for this royalty. As to that particular item with reference to the testimony of C. A. Rogers, that was made up from hearsay statements of Guy Rogers, the attorney for the Wichita Royalty Company, and Mr. Scannell, the trustee. I was informed, as stated in the report, "that the examiners notes not yet transcribed, show that Mr. Harrell testified that he and Mr. Basham took in the Curlee interest for $3,567.75, knowing that G. W. Peckham was making $1,000.00 profit in the trans-

2019

action, whereby J. T. Harrell and C. E. Basham sold this Stephens Royalty interest to Wichita Royalty Company," Mr. Scannell and Mr. Rogers told me that Mr. Harrell said that Mr. Peckham was making $1,000.00, and he knew it, or words to that effect. Any error I have made in the record, I will gladly correct, I have prepared this thing hurriedly and it is possible I have missed something. I have sat up many an hour running these references, and dug them up myself and then double checked them.

Defendant's Exhibit 186 is the one I prepared in collaboration with other parties. The Callahan property, Cross Plains royalty is page 1952. I never gave Mr. Peckham any credit for what he paid out of his personal funds for the purchase of that royalty. With
2020 reference to the mineral deed being filled out in blank, etc., the testimony I used is in the record, Q. and A., at pages .... and ...., that is my opinion and my conclusion, according to that testimony. I stated that as a fact, but it is my opinion and conclusion, that I drew. I don't know whether Mr. Carson had any actual knowledge as to the facts or not, he was an employee of the bank for years. I will say this, that in Mr. Carson's testimony he says that in his opinion the grantee's name was in blank when the deed came in—that is what I gather from his testimony, the question by Mr. Rogers is, "Mr. Cason, do you say you think that the Wichita Royalty Company's name is written at a place where there had theretofore been no erasures?" And his answer is, "That is my opinion." Further down he says, "It is not the same typewriter that was used to write the name Wichita Royalty Company in there, I don't think." He does not say anything about Mr. Peckham writing the name of the Wichita Royalty Company, a trust estate in there. That was my conclusion from the testimony, as indicated. That is the statement I used. I could not say myself when the name of the Wichita Royalty Company was written in that instrument, whether before George Peck-

ham paid the draft or after. When I said on page 1952 my report that was my conclusion, I said Peckham wrote it in there, and now I say I don't know anything about it. That was my conclusion at the time.

Through this instrument I gave my conclusion as to various of the properties. The first one I deal
2021 with is the Grimshaw, purchased during the early administration by George Peckham, February 12, 1923, is the conveyance to Peckham from Grimshaw. That royalty is repudiated. We have charged Peckham with what he transferred out of the trust funds for the Grimshaw royalty. I have not given Peckham credit for what the Grimshaw royalty cost Peckham when Peckham bought it, I charged it to him—the cost of the Grimshaw Royalty of $7,500.00. I have not allowed him any credit for it. Peckham had paid $7,500.00 for the Grimshaw Royalty and the Grimshaw paid Peckham $7,500.00 for it, and if the Grimshaw royalty company had not produced a barrel of oil, I would have Peckham owing the Wichita Royalty Company, $7,500.00 under my statement. The original escrow contract with reference to the Grimshaw Royalty is dated March 12, 1923, and the deed made soon thereafter, and the royalty company entered it upon their books as a royalty owned by them, and the royalty company, during the lifetime of the royalty, regarded it as their property and received their part of the oil runs, which was considerably more than the original cost, and has been agreed upon, is $8,591.70, $1,000.00 more than the original cost of the royalty. I charge Mr. Peckham with the cost, and credit him with the oil runs,—would Mr. Peckham be entitled to the cost to Peckham? I will say that I charged him with the purchase price and credited him with the oil runs. I did not give him credit for the cost.

The Luke Wilson property is dealt with on page 1943 my report I use this $12,000.00 check, No. 154,
2022 dated February 2, 1924, payable to B. L. Fain, it was deposited on February 22, 1924, in Mr.

Peckham's commingled account. The check is payable to B. L. Fain, to his order; my interpretation of the record is that it was transferred by trust check No. 154, and deposited in Peckham's account, as to any subsequent or interim transaction, I would not be in position to say, I have seen the check. The check is indorsed, both in the payee's name and Mr. Peckham's name, no I am wrong about that, Mr. Peckham's name, I say it was deposited to his account. I know the effect of an indorsement in blank creates an instrument payable to the bearer. That is what happened, this check was issued to B. L. Fain and B. L. Fain or E. E. Scannell, or someone for B. L. Fain, indorsed the check and the check was deposited after its indorsement to the credit of G. W. Peckham in his personal account, yet, I have treated this as if it came direct from the Wichita Royalty Company. The next item of $9,250.00 was the balance of the payment on the Wilson Royalty. In making my report against Peckham and the bank, I have charged Peckham with the oil payment, I charge him with what the royalty company transferred for that purpose.

As to the statement with reference to the White lands, on page 1947, of my report, with reference to those two checks, aggregating $21,000.00, I say in my statement, "On the same date those checks were cleared Peckham received credit upon his account for a like amount." I will say this, the $10,000.00 check No. 246, Plaintiff's Exhibit 161, shows that the date of issuance, July 24, 1924, payable to the order of Security National Bank, paid through the Security National Bank on July 26. On July 25, there was a deposit of $10,000.00 to G. W. Peckham's account, and on July 26, $10,000.00 was charged to the Wichita Royalty Company's account. It was cleared the day after the deposit of $15,000.00 was made in the Wichita Royalty Company's account. Instead of being the same day in my report, it should have been the next day. These two checks, $10,000.00 and $11,000.00 were made payable to the order of Security National Bank.

2023

It is my understanding after reading the record, that these two identical items were deposited in the Security National Bank, that is the original check, I don't know how it got over here in the City National Bank, if that represents the same fund, I believe Mr. Carson testified it was evidently the same money.

I do not have any interest in this lawsuit, I am only telling you what is my understanding of Mr. Carson's testimony. That money could have gotten over here in this bank in several ways, I would not attempt to say, whether by cashier's check or by cash or by check on the Security National Bank—I haven't had any Security National Bank records.

I say on page 1949 of my report that the books of F. O. Harrell show $698.65 received from Peckham—I saw the books of F. O. Harrell, in my ofifce. I do not have those books now, that was about a week ago, Mr. Scannell got them for me, I don't know where he
2024 got them, I turned them back to Mr. Scannell. I was working up this report. I do not know whether any person connected with the City National Bank had access to these books or not. I do not know whether they were F. O. Harrell's trustee books or his individual books.

The next is the Routan Royalty, I did not try to trace the cost of this to Mr. Peckham. I have given Mr. Peckham no credit for the cost of this royalty to him.

The next item, the Porter Ranch, I make a statement that Peckham, trustee, after paying $1,250.00 on his part of the cash consideration, took $1,250.00 from the Royalty Company. I further say that the property was foreclosed, I got that information from the records.

The Hartley County property No. 94, I charged that item against the bank, $1,920.00; that item was taking up the draft that was made payable to the City National Bank—I don't think the $1,920.00 was deposited. Mr. Peckham took up the draft, it was not deposited into his bank account. On page 1958, I make a state-

ment that $220.00 of $301.82 was transferred, that the bank received that money, I do not think that is an incorrect statement. I show in my report that the balance to the account of Mr. Peckham on March 16, 1927, was $1,274.42, and shows that Peckham deposited from his personal funds, $582.00, that will aggregate $1,856.42; then he gave a check for $1,500.00, subtracted from his personal account, paid on the note, that would leave in his personal account, $356.42. I do
2025 not know the genuine indorsement of B. L. Fain. These checks that I referred to on page 1676 my report, with reference to Defendant's Exhibit 186, that none of the above checks, referring to certain checks, except 598, bear the genuine indorsement of B. L. Fain, I followed the testimony as to that statement. I also read the pleadings in the case, and used both the pleadings and the testimony in making up my report, and used the pleadings if they were backed up by the testimony. In the beginning of my report, I used the words, "Substantially of the cross complainant's re-casted cross complaint and interpleader, filed December 2, 1936," "On January 1, 1926, G. W. Peckham and J. T. Harrell were associates and good friends." The pleadings say, "The former trustee of the Wichita Royalty and the latter was the chief executive officer of the plaintiff bank," and I say, "Mr. Peckham was trustee of the Wichita Royalty Company and Mr. Harrell was an executive officer of the plaintiff bank." The pleadings say, "These men were partners in a large suburban venture and joint owners of land known as the Curlee tract," and I say in my report, "They were business associates, these men were partners in a large suburban venture known as the Marlborough Addition, they were then negotiating with W. S. Curlee for their joint venture of the Curlee tract." On page 1656 of my report, I say, "The effect of the above, as indicated by the records, is that Mr. Harrell, as an individual, had acquired and sold a valuable property." Judge Rogers says in the pleadings, paragraph 32, "The

2026 effect of the above is this: J. T. Harrell as an individual sold a valuable property." That is substantially the same language. And I also say, "As an executive officer of the plaintiff bank, he loaned the money with which it was bought," and Judge Rogers says in his pleadings, "As a banker, he had loaned G. W. Peckham the money with which it was bought, the loan being made upon the credit of Wichita Royalty Company, to the company to which the deed ran," and I say, "This loan was negotiated to the credit of the Wichita Royalty Company and title was conveyed by Messrs. Harrell and Basham to the trust. It is substantially the same language. And again, "Mr. Peckham as an individual, disposed of his personal interest in the Curlee land for a $1,000.00 profit; Mr. Peckham paid Mr. Harrell from transferred funds, such an amount as to enable Mr. Harrell to pay the plaintiff bank upon his own indebtedness to the bank in the sum of $5,006.67." And Judge Rogers said, "G. W. Peckham, as an individual disposed of his interest in the Curlee land for $2,417.00." My report and the pleadings run along the same lines, and the testimony bears them out. Defendant's Exhibit 186 is an examination or report, into certain items that I have taken and backed up by evidence.

In Defendant's Exhibit 187, I undertake to account for all the funds that were transferred by G. W. Peckham, or from the Royalty Company and deposited on checks of the Royalty Company to the individual account of G. W. Peckham in the City National Bank.

2027 I don't know whether I left any of them out or not, I have analyzed certain so-called penetrations. My meaning there is that out of trust funds certain items were paid to the bank on Mr. Peckham's personal indebtedness. The first item I detail is $390.00, the analysis beginning on the 11th of May, 1923, and ending June 22, 1923, from that analysis I claim $390.80 was used on the payment of a check of $3000.00 principal and $50.60 interest on 6-22-23. The minimum balance between the 5th and 11th, 1923, and the 6-22, 1923, was

$428.85. On June 15, 1923. The individual ledger sheet of G. W. Peckham in the City National Bank in June, 1923, shows the minimum balance was $905.05 on June 13, 1923. I do not show the minimum balance in my report that day, I show the total balance at the end of the day, also the personal funds and the trust funds. I show a minimum balance of trust funds on that day, $1,513.30; if his minimum balance was $905.50, as shown by the bank's books, it would necessarily decrease the trust funds between $1,513.50 and $905.50, the difference between those two items, it is stated on the basis of total business transactions, and not the interim transactions during the day. The difference between those amounts is $607.45. A decrease in trust funds for the bank's books and records. This penetration of $390.00 occurred on June 22. The difference between the trust fund which I show as trust fund, from the minimum balance rule on the books would amount to a decrease in trust funds of $607.45, and I follow my minimum balance right on through to the date of payment, which brings the balance lower, the transfer I claim
2028 was a transfer of trust funds, May 11, 1923, check which went for the Grimshaw royalty. If that item was applied, in my computation, to the Grimshaw royalty, there would be no penetration, but this royalty is repudiated and we considered that as a transfer of trust funds. I mean Wichita Royalty Company. When I say we, I mean Mr. Scannell, Judge Rogers, Mr. Sheppard and myself. I have no interest in the Wichita Royalty Company. My books and my analysis do show the minimum balance on June 13, 1923. I prepared this report on the basis of the entire transaction, and my report shows the beginning or closing, showing the beginning balance for the day and the closing balance for the day of all the transactions considered together. There are two balances which appear on the statement of G. W. Peckham. The beginning balance on June 13, as per the bank ledger, was $2,441.38. subsequent transactions reduced this balance to $905.05; the closing balance

was $5,208.85 which involved several transactions and findings. I have used the entire amount. I would not say that my report shows the smallest balance on June 13, 1923, the minimum balance and the smallest balance are the same. My books show a balance of trust funds of over $1,500.00 on that day. The bank records show a minimum balance of $905.05 on that day, a difference of something like $600.00. The penetration on that day is $390.86.

The next item is $279.00, evidenced by payment of interest on a note that had been charged off by the City National Bank to G. W. Peckham 10-16-23; my
2029 statement relates to a so-called deposit of trust funds on 10-16-23, of $500.00, which was a salary check, payable to the order of G. W. Peckham, deposited in the City National Bank, and I treated that salary as a wrongful transfer in determining this $279.50 penetration. If it had not been for that salary check deposited on that day, there would have been no application of trust funds.

The next item on page 1710 my report, treated as a transfer or deposit of trust funds in order to obtain a penetration of $67.67, being interest payment on a note owed by G. W. Peckham—a transfer or deposit by Peckham of the $12,000.00 check—which was payable to the order of B. L. Fain and indorsed by B. L. Fain, or someone under his authority. If I had not treated that $12,000.00 check issued to B. L. Fain as a deposit of trust funds from the Wichita Royalty Company, there would have been no penetration on that day.

On page 1711, I show a payment of a note of $10,026.00 in effecting a use of trust funds of $5,500.00. That was a note of W. H. Peckham. If I had not charged that payment to the note of W. H. Peckham, there would have been no penetration on that check there would have been no use of trust funds, in respect to that item. On the same page, 1711, I have $9,250.00, I show that to be a transfer of trust funds. I know on the same day that Peckham paid out $80,000.00 for that royalty by

check for the L. F. Wilson royalty. I did not make any application of that $9,250.00, purchase of the
2030 Wilson Royalty, to an application of the $80,000.00 check that Peckham had issued on his personal funds to L. F. Wilson for the price of this royalty.

The next application of trust funds, is an item of $1,386.92 that I claim was used out of the royalty company money to pay a note, principal of $4,000.00 and interest of $56.00, on May 12, 1925; the alleged transfer that I claim was made on the 5th of May, 1925, was $2,500.00, that went to pay for the Routan royalty. That item is repudiated, so we call it a transfer of funds. If you treat that one day's transaction as a unit, Peckham deposited personal funds on that day of $4,183.00, and paid the bank $4,056.00 on the same day, also several other checks went to various parties. There were two checks to the collector of Internal Revenue in the amount of $509.89, and $474.91, and, Security National Bank, $2^0.00, and James Holcomb, $329.12, I presume the checks to the collector of Internal Revenue were for income taxes.

The next item, on page 1714, $400.00, salary on June 2, 1925, and I treat that as an item of wrongful transfer in an effort to show that the bank got $66.67 on the payment of interest on the 11th of June of that year. My report shows that on that very day Mr. Peckham had a balance of $202.54 personal funds, it also shows that on the same day there was two checks issued for $5.00 each and one for $500.00. The books of the bank indicate the sequence of those checks the same as I show on my report, I considered the entire day's transactions.

The next item, as to the use of funds, of
2031 Wichita Royalty Company, to pay City National Bank, was $10.00, which was rent on a deposit box. In order to make that, I considered a deposit of $400.00 on April 3, evidenced by salary check of G. W. Peckham as an improper deposit in his account.

The next item is an item of $500.00, payment on interest on note No. 81,324, G. W. Peckham, on August 10, 1926, that arises by virtue of the transfer that I claim was made on August 2, 1926, of $4,000.00; the voucher on that check shows it was for the purpose of paying the Highland Irrigation Company note, due 9-19-26. The four checks that you call off to me now, No. 532 for $4,357.58, No. 556 for $700.00, No. 538, for $538.16, all Wichita Royalty Company checks, including the $400.00 check, aggregates $9,595.74. I don't recall whether Mr. Peckham used those items for the purpose of paying Highland Irrigation Company matters or not, out of his own personal funds of $5,594.74. The $4,-000.00 check, No. 525 was deposited in Mr. Peckham's personal account, I don't recall whether the other three checks you mentioned were or not. This Marlborough was repudiated and such transfers were considered a transfer of trust funds for these repudiations. No credit was given to Peckham for any payment that he made in the improvement of it, from his personal account, the entire property was repudiated and these items deposited in his account are considered for these computations, a transfer of trust funds. The minimum balance in G. W. Peckham's account on September 2, 1926 was $128.51.

2032

Mr. Lambert and I reached the same agreement on item 9, page ...., Exhibit 187.

Page ..., Defendant's Exhibit 187, the next payment [redacted] the note of G. W. Peckham, 3-16-27, the beginning balance in George Peckham's personal account on that date was $1,274.42, he made a deposit on March 16 of $582.00, considered in personal funds, which would be a total of $1,856.42. The first check charged to the bank account on that day is $1,500.00, payable on notes No. 81,175, G. W. Peckham. Subtracting $1,500.00 from his balance, leaves a personal balance of $356.42. The next check was $577.00, to Texas Electric Service Company. The next item was $10.00 on page ...., Defendant's Exhibit 187, is where George Peckham paid $10.00 rental

on a safety deposit box in the City National Bank, and I claim that was use of trust funds in making that payment, Deposit of check for $500.00, issued to the order of B. L. Fain. The records will substantiate that the payee's name was indorsed by G. W. Peckham. On page ..., of the same exhibit a payment of $525.00 on note 36, of Wichita Royalty Company, that payment was made on the note of the Wichita Royalty Company and not Mr. Peckham. I also show another payment on note of $520.00, the same day, being 194, of G. W. Peckham's. The next item on page ..., I charge payment of $513.33 on note and interest, due by G. W. Peckham to City National Bank. In considering that a payment of trust funds, I have treated the $6,000.00 deposit made upon a cashier's check issued by Wichita State Bank and Trust Company, payable to W. C. Duncan and indorsed "Pay to the order of G. W. Peckham for Bristow Royalties, W. C. Duncan," as a deposit of trust funds. There was nothing to show it belonged to the Wichita Royalty Company, it is a cashier's check payable to W. C. Duncan, and indorsed by him. On page ..., I arrive at an application of trust funds to the payment of Peckham's individual debt, by treating a salary check issued by Wichita Royalty Company as an improper transfer, salary check dated 9-10-28, and shows that it was for Peckham's salary for preceding month. On page ..., I again use a deposit of a salary check for the same purpose.

2033

On the first page of my report, I have an item of $234.00 which was not the Wichita Royalty Company check. I have a check of $302.00, which was not the Wichita Royalty Company's check; those checks were checks of G. W. Peckham whereby he paid over to Wichita Royalty Company oil runs on Grimshaw. Those amounts did not come from the Wichita Royalty Company, they were from G. W. Peckham's account. For instance, I have a check here, No. 154, of $12,000.00, payable to B. L. Fain, I have included in this list. A check of G. W. Peckham for $184.00 on the second page; $141.00 on

the second page, also $525.00, $275.00, $480.00, $206.00, $182.00, $538.00, $138.00, $74.00, on the second page, and on the third page, $135.00, $5.00, $35.00, $40.00, $34.00, $751.00, $52.00, $54.00, $45.00, $47.00, and many other similar items that never did come from the ac-
2034 count of the Wichita Royalty Company into Peckham's account, they went from Peckham's account into the Wichita Royalty Company account, I charged against Peckham and gave corresponding credit for each amount. I charged these checks against the City National Bank and also gave corresponding credits to which they were entitled, therefore there would be no difference.

As to the items that did not find their way into the royalty company's account, for the sale of the Wilson Royalty and Hattie Vaughan Royalty that went directly into Peckham's account, $6,000.00, cashier's checks, to W. C. Duncan, I think that was deposited to Mr. Peckham's account. I have also included in this statement of salary checks, pages ... to ..., Defendant's Exhibit 187, the salary checks that were issued and paid to G. W. Peckham from the beginning of his term of office or shortly after he begun working until the time of his death, which were deposited into his account.

2035 Mr. Morrow:

Regarding what is known as the Routon Royalty, upon which the Wichita Royalty Company issued its check No. 373, dated May 5, 1925, in the sum of $2,500.00, the following appears—from the escrow files of the City National Bank of Olney, Texas, there is found an original letter, written by J. B. Routon to said bank, dated May 1, 1925, showing that there was then being deposited in said bank, a deed for one-fourth of the minerals in the one hundred and seventeen acre tract of land out of the Isaac Holman League and Labor in Archer County, Texas, which deed is dated May 1, 1925, together with a check of $10,000.00 drawn by G. W. Peckham in favor of the City National Bank of Olney on the City National Bank of Wichita Falls, showing that said papers were to re-

main pending abstract of title examination, for which fifteen days was given. The original deed so deposited is now found among the files of George B. Ray and J. H. Massie, dated May 1, 1925, recites $10,000.00 paid. $10.00 revenue stamps canceled and conveys said 1/4 interest to the said Ray and Massie. There was also found among the checks of G. W. Peckham a check dated May 1, 1925, drawn in favor of the City National Bank of Olney, Texas, for $10,000.00, and marked escrow, which was cashed on May 4, 1925.

2036

Mrs. Joella Terrett Butler, secretary for Dr. J. H. Massie states that actually Ray and Massie did not pay $10.000.00, but paid $5,000.00, as evidenced by their check of May 5, 1925, drawn in favor of G. W. Peckham on the Security National Bank of Wichita Falls, marked "Routon Royalty" and indorsed by G. W. Peckham and paid on May 5, 1925, and deposited by G. W. Peckham to his personal account in the City National Bank of Wichita Falls, along with other checks on May 5, 1925, the total deposit being $17,500.00. In that deposit were two other checks of $2,500.00 each.

Mrs. Butler further states that Ray and Massie never intended to buy more than a half interest in the property which would be 1/8 of the minerals.

The deed from Routon and wife to Ray and Massie was filed for record on the 22nd day of May, 1925, and Ray and Massie in turn executed two royalty payments conveying a 1/16 interest in the minerals in the same land, each dated June 30, 1925, one in favor of Wichita Royalty Company and one in favor of R. R. Robertson, both of which have been filed for record in Archer County, Texas, the Wichita Royalty Company conveyance being filed on the 5th day of December, 1925, and the Robertson conveyance on April 3, 1926. On the Robertson conveyance there was $2.50 revenue stamps.

2037

Mr. R. R. Robertson and his bookkeeper, Mr. Jimmie Terrell, state that while this was taken in the name of R. R. Robertson it belonged to Muse and Robertson, and that

the Muse and Robertson checks have been lost, or may be found at the Courthouse where there was some kind of a partnership accounting. However, they state that the journal of Muse and Robertson shows as an entry the fact that $2,500.00 was paid for this 1/16 mineral interest.

All parties waive the production of the witnesses, and agree that this statement may be used in lieu of bringing the witnesses here.

Mr. Rogers:
That is all right.

Mr. Boone:
Let the record show that the Defendants, City National Bank offered in evidence a statement showing the following facts:

(Said statement marked "Defendant's Exhibit 188" as follows:)

DEFENDANT'S EXHIBIT 188.

In order to show the volume of business handled by the Tellers of the City National Bank during the period inquired about herein, we have at random picked out a few days in each of the years 1923, 1924, 1925, 1926, 1927 and 1928, which show the following number of deposits, together with the number of respective items
2038 shown making up these deposits: These transactions do not take into consideration the respective checks that the Tellers handled and cashed at the counter, nor making change for respective customers:

	Number of Deposits	Total No. of Items on the Deposits
4-24-23	1156	7206
5-11-23	541	3202
2- 2-24	707	4108

	Number of Deposits	Total No. of Items on the Deposits
9-21-24	953	5149
11-10-24	1087	5188
3- 3-25	1770	9942
7-20-25	1180	5646
10- 8-25	646	4889
1-11-26	1175	6982
1- 4-26	1205	8061
1-18-26	1091	7847
2-23-26	1352	10142
3- 6-26	850	4300
12-22-26	685	6515
1-19-27	758	5034
2-19-27	933	4407
9-16-27	815	4816
10-14-27	624	5310
2- 6-28	1137	13680
2-24-28	716	9291
4- 4-28	670	11554
4-20-28	891	10649
9-27-28	583	4367

Mr. Boone:

It is further agreed that during the years 1923, 1924 and 1925, the number of receiving and paying tellers in the City National Bank during that period, was six. That from and after January 1, 1926, including 1928, the receiving and paying tellers of the City National Bank were seven in number.

The City National Bank further says that in connection with this fact, that the total deposits of the City National Bank of Wichita Falls, as shown on the dates beginning December 29, 1922, and ending December 31, 1929, are as reflected by the exhibit as follows:

(Marked "Defendant's Exhibit 189" as follows:)

2040 DEFENDANT'S EXHIBIT 189.

Total Deposits,

City National Bank.

Date	Amount
12-29-22	$ 8,227,630.28
4-3-23	7,722,280.97
6-30-23	6,842,685.89
12-31-23	7,659,346.62
3-31-24	7,042,032.87
6-30-24	6,816,485.06
10-10-24	6,693,161.23
12-31-24	10,876,374.17
4-6-25	10,327,305.29
6-30-25	10,633,900.94
9-28-25	10,014,284.31
12-31-25	10,891,528.81
4-12-26	10,962,329.02
6-30-26	10,683,926.48
12-31-26	10,406,186.27
4-23-27	10,546,974.09
6-30-27	9,287,565.80
10-10-27	9,453,931.98
12-31-27	10,267,068.42
2-28-28	9,983,004.84
6-30-28	10,162,557.57
10-3-28	9,118,601.78
12-31-28	9,968,532.10
3-27-29	9,701,171.33
6-29-29	8,063,700.09
10-4-29	7,006,104.65
12-31-29	8,674,374.87

2041 Mr. Humphrey:

It is agreed that the directors of the City National Bank in Wichita Falls, at the time of its organization, were Frank Kell, J. T. Harrell, Oral Jones, L. H. Cullum, Joe Kell, F. T. Timberlake, C. W. Snider, J. J. Perkins, and, Leslie Humphrey.

2042 J. T. HARRELL, recalled for further cross examination by Mr. Rogers, testified as follows:

I understand that these checks of the Wichita Royalty Company are what is known as voucher checks, there is a perforation at the top.

We begun to develop the Marlborough Addition about March 26, I neglected to get the date of the filing of the plat and the dedication.

In the trial of this case in the State Court, the question asked me by Mr. Humphrey, was if it were material to me whether the account was carried in the name of the Wichita Royalty Company or G. W. Peckham, the question was, "Was it all alike to you?" and I answered, "Yes, sir."

I do not know anything about the facts set out in the letter you now hand me.

Mr. Rogers:

We offer this certificate in evidence.

DEFENDANT'S EXHIBIT 196.

Department of State

State of Texas

Austin, Texas.

(Seal of State)

Edward Clark, Secretary of State.

2043 February 20, 1937.

Kilgore & Rogers,
First National Bank Building,
Wichita Falls, Texas.

Gentlemen:

This will acknowledge receipt of your letter of the 16th instant.

You are advised that the Texas Investment Company, Wichita Falls, Texas was granted a domestic charter August 30, 1929. It's right to do business as a corporation was forfeited July 2, 1933 for failure to pay franchise taxes.

We assure you it is a pleasure to be of service to you at all times.

Yours very truly,
EDWARD CLARK,
Secretary of State.
(Signed) M. E. SANDLIN,
Assistant Secretary of State.

The Witness:

The reference, to Mr. Deaton, termed by me perhaps as the deficiency note of the old bank, is the difference between the acceptable assets and the amount of deposit liability; the liability ledger account that is in evidence reflects the same transaction. There has been no pay-

ment by the old bank to the new bank, other than those reflected in the liability ledger.

As to the sale of the Stephens Royalty and reporting the income for 1925, whatever the record shows is correct.

Mr. Boone:

He reported the first sale on income tax, but I will make this statement, the first sale of the income tax, part of the purchase price, to-wit $5,005.00 of the
2044 original purchase price was not paid until February, 1926, but the report shows as of 1925.

The Witness:

I have testified to various transactions, by the directors of the old bank, occurring with the view to lending credit and support to the old bank. The obligations underwritten by the directors in most instances, had assets of the bank pledged as collateral, and was then underwritten by the directors, some of its obligations were not re-discounted by the other bank, in our over-extended position. It was first an obligation of the old bank. We did not expect the directors to pay if the bank had sufficient assets to pay its obligations, it was simply an underwriting of the obligations in order to furnish the necessary credits, and continue the bank as a going concern. They would be in the position of a surety if the obligations of the bank were not paid, and any loss that might be sustained they expected ratably to be distributed among those that were liable upon their double liability as stockholders of the bank, that would be the result of the final settlement.

The repurchase agreement, that was a definite obligation, these gentlemen were not in the business of purchasing notes, it was primarily an obligation of the bank—that it is not a fact, I stated it was primarily an obligation of the bank. I want to state the facts. The repurchase agreement did not carry the obligation of the bank on the repurchase agreement. On the bills payable it did, of

course, but under the repurchase agreement the
2045 items were sold without recourse on the bank and the contract was entered into by the directors to repurchase them if they became in default.

When I stated in the record that it looked "like they were going to call for us to liquidate the bank," I mean the public, the stockholders, the depositors, it would appear that the depositors were going to call for the entire liquidation of the bank, by virtue of the continuous withdrawals of funds, which I termed a dry run. The banking department was offering us every encouragement. Naturally if the withdrawal had continued it would mean an ultimate liquidation.

I expect on behalf of myself and the bank, when this litigation is finally terminated, to pay my counsel a reasonable compensation, I will satisfy my counsel.

Mr. Peckham, during his lifetime, so far as I know, contributed his part from time to time to the Marlborough Addition.

Re-Direct Examination.

By Mr. Humphrey:

I did not handle the matter of paying the franchise tax on the Texas Investment Company, Mr. Deaton handled that.

Re-Cross Examination.

By Mr. Rogers:

There were perhaps in excess of eleven thousand items handled or cleared through our bank during one day, as
shown by this record, at the different tellers'
2046 windows, and desks of the officers. During the day those checks would all be sorted and stacked and placed in initials, in stacks. I am not able to testify as to the routine of the workings of the bank, I had very little to do with the clerical end.

Re-Direct Examination.

By Mr. Boone:

From the inception of the Marlborough Addition, to the time of George Peckham's death, I did not have anything to do with the keeping of the books and records and details of the handling of that transaction, that was under the supervision of Mr. Peckham I don't know who actually kept the records. I just put up the money that they asked me to put up and had nothing to do with the details. I did not investigate the record to find out anything about it.

E. A. DEATON, recalled for further direct examination by Mr. Humphrey, testified as follows:

I looked after the payment of the franchise tax of the Texas Investment Company, that tax became delinquent to the secretary of state at one time, in 1934. I paid the franchise taxes that were delinquent in November, 1935. I have the check, and sent it by remittance letter to the Secretary of State—I think we had a statement, I
2047 don't think a letter accompanied those checks, however, I have a letter here tracing that remittance, letter dated November 19, 1935, stating that "on November 2, we forwarded to you franchise tax," that is what happenend, the report accompanied those checks and the original remittance for the years 1932, 1933. and 1934, together with cashier's check in the amount of $257.40. We said in the letter that we had no knowledge of this remittance and would appreciate sending a receipt for the taxes as soon as possible. I sent that letter prior to the time I sent the check of November 4. I received a letter from the Secretary of State, acknowledging receipt of the letter November 22, 1935, and this is the letter I received, acknowledging the receipt of the check of $257.49. Here is a check of $1.95, November 26, 1935, that made the total amount. There is no tax accrued since

that payment, that is the total payment. We received a letter dated December 10, and on the 12th of December, 1935, from the secretary of state, this is the letter you now show me. This is the tax receipt from the secretary of state, showing the payment of franchise taxes for 1935 and 1936, and these are the receipts. I also received these receipts dated January 29, 1935, and 1936. The franchise tax is payable May 1, of each year, for the year ending April 30.

2048 Mr. Humphrey:

I offer in evidence two cashier's checks, one dated November 4, 1935, payable to the Secretary of State for $257.40, bearing the indorsement of the Secretary of State.

Another check of $1.95, dated November 19, 1935, payable to the Secretary of State.

Also Franchise tax receipts showing the receipt of all corporation taxes for the year ending April 30, 1936.

Also letter from the Secretary of State dated November 22, 1935, showing the status of the account and the amount of taxes delinquent.

Also a letter from the Secretary of State, dated December 10, 1935, showing that the corporation's right to do business has been revived as of December 2.

All of said instruments marked "Plaintiff's Exhibit 222" and reading as follows:

2049 PLAINTIFF'S EXHIBIT 222.

(Check) Wichita Falls, Texas Nov. 4, 1935 A 79503 51369 (in ink) J. B. Mintor, Exchange Teller City National Bank in Wichita Falls Pay to the order of Secretary of

State of Texas $257.40 $257 & 40 cts (No Pro) (88-17) 88-130 11 (Cashier's Check) (Signed) H. S. Davis, Ass't Cashier for Cashier (On back thereof) Pay to the Order of Treasurer State of Texas R. B. Stanford Secretary of State (Stamped) 32-3 Pay to the Order of any Bank, or Banker all Prior Indorsements Guarantee Nov. 8, 1935 Federal Reserve Bank 32-3 of Dallas 32-3 8 (Perforated) Paid 11-19-35 88-130 (Stamped) Austin National Bank pay to the order of any bank, banker or trust Co. Nov. 7, 1935 All Prior Indorsements Guaranteed 88-17 Austin, Texas.

(Stamped) For Collection -o- Nov. 7, Charley Lockhart State Treasurer of Texas.

(Check) 52191 Wichita Falls, Texas Nov. 26, 1935 A 80317 Pay to the order of Secretary of State of Texas $1.95 $1 & 95 cts 88-130 11 Cashier's Check (Signed) J. B. Mintor Ass't Cashier for Cashier (On the back thereof) Pay to the Order of Treasurer of State of Texas R. B. Stanford Secretary of State. (Perforated) Paid 12-1035 88-130 (Stamped) 32-3 Pay to the order of Any Bank or Banker, All prior indorsements guaranteed Dec. 2050 9, 1935 Federal Reserve Bank of Dallas (Stamped) Austin National Bank Pay to the order of any bank, banker or trust Co. Dec. 6, 1935—88-17 Austin, Texas.

(Stamped) For Collection -o- Dec. 5, 1935 State Treasurer of Texas.

(Card) Addressed to Texas Investment Co. of Wichita Falls, City National Bank, Wichita Falls, Texas (Stamped) Austin, Texas Jan 30, 11 AM 1936 Capitol Sta. (on reverse side) State of Texas Franchise Tax Receipt Amount $85.80 Date Jan. 29, 1936.

The Secretary of State hereby acknowledges receipt from the corporation named below, of Franchise Tax(es).

and/or penalties in the amount sh n above, due the State of Texas for the year(s) ending April 30, 1936. Acceptance of this amount does not preclude the assessment of additional taxes and penalties according to the laws of this State. In testimony whereof, witness my official seal of office on the date above written. Name and address of Corporation: Texas Investment Co. of W. F. Account Number 19720. (Seal) Jan 31, 1935 (Signed B. R. Stanford, Secretary of State.

(Card) Addressed to Texas Investment Co. of Wichita Falls, City National Bank, Wichita Falls, Texas. (Stamped) Austin, Texas Jan 30 11 AM 1936 Capitol Sta. (On reverse side thereof) State of Texas Franchise Tax Receipt Amount $62.40 Date Jan. 29, 1935.

2051 The Secretary of State hereby acknowledges receipt from the corporation named below, of Franchise Tax(es), and/or penalties in the amount shown above, due the State of Texas for the year(s) ending April 30, 1936. Acceptance of this amount does not preclude the assessment of additional taxes and penalties according to the laws of this State. In testimony whereof, witness my official signature and seal of office on the date above written. Name and Address of Corporation Texas Investment Co. of W. F. Account Number 19720 (Seal) Jan. 31, 1935 (Signed) R. B. Stanford Secretary of State.

(Card) Addressed to Texas Investment Co. of Wichita Falls, City National Bank, Wichita Falls, Texas. (On reverse side thereof) State of Texas Franchise Tax Receipt Amount $109.20 Date Jan. 29, 1936.

The Secretary of State hereby acknowledges receipt from the corporation named below, of Franchise Tax(es), and/or penalties in the amount shown above, due the State of Texas for the year(s) ending April 30, 1936. Acceptance of this amount does not preclude the assessment of additional taxes and penalties according to the laws of

this State. In testimony whereof, witness my official signature and seal of office on the date above written. Name and Address of Corporation Texas Investment Co. of W. F. Account Number 19720. (Seal) Jan. 31, 1935 (Signed) R. B. Stanford Secretary of State.

2052 —(Letter).

Department of State,

State of Texas.

(Seal of State) Austin, Texas.

R. B. Stanford,
Secretary of State.
Texas Investment Company,
P. O. Drawer 60,
Wichita Falls, Texas.

November 22, 1935.

Account: 19.720.

Gentlemen:

We acknowledge receipt of your communication of November nineteenth relative to the filing of your franchise tax reports and the payment of your franchise taxes.

Our records show that we received your reports on or before November fourth, together with remittance in the amount of $257.40. However, we computed the correct amount due to be as follows:

Tax for 1934	$ 39.00
10% penalty	3.90
25% penalty	9.75
Tax for 1935	39.00
10% penalty	3.90
25% penalty	9.75

Tax for 1936	39.00
10% penalty	3.90
25% penalty	9.75
Revival fee	101.40
Total amount	$259.35

2053 Upon receipt of your reports and remittance we mailed you a post-card stating that there was a balance yet due of $1.95.

We regret that you failed to receive this card, but immediately upon receipt of your remittance in this amount we shall place your corporation in good standing to April 30, 1936.

We trust this information to be sufficient, and wish to assure you that it is our desire to cooperate at all times.

Very truly yours,
R. B. STANFORD,
Secretary of State.
By W. C. CASON.
WCC-s Franchise Tax Department (s)

(Letter).

Department of State,

State of Texas.

(Seal of State) Austin, Texas.

R. B. Stanford,
Secretary of State.
Texas Investment Company,
Wichita Falls, Texas.

December 10, 1936.

Account: 19,720.

Gentlemen:

We acknowledge receipt of your communication of December seventh relative to the remittance of $1.95.

covering balance due on your franchise tax for the current period.

This amount has been received and placed to
2054 the credit of your franchise tax account, and your corporation's right to do business has been revived as of December second, same being in good standing with this office to April 30, 1936.

Our supply of official receipt cards is exhausted and trust you will accept this communication as receipt of the above amount.

Very truly yours,
R. B. SANFORD,
Secretary of State.
By W. C. CASON.
WCC-s Franchise Tax Department.
Dec. 12 1935.

GUY ROGERS, being first duly sworn, testified as follows:

Being an attorney of record, I am, of course, reluctant to testify, but the record shows that I got a little more money out of this than I feel like I did, and I would like to sketch what the terms and the relationship has been here.

The first time the Wichita Royalty Company consulted us about anything, or any matter, was in the spring of 1930, perhaps in June. It seems that there had been a suit filed against the Wichita Royalty Company on some notes, that are in evidence, and we were asked concerning whether or not the Wichita Royalty Company could offset that, or receive credits upon it by virtue
2055 of the checks which were they presented to us, being check No. 571, 579, 591, 620, 635, 650, 657, and 710, all being payable to the plaintiff bank. And the inquiry was whether or not by virtue of their having been made payable to the bank's order, and having not been accounted for as we were advised, an offset could

be had. Those checks were photostated at the time, and I have before me now, which I exhibit, the original photostat made at the time. We received a retainer of $100.00, which is royalty Company's check No. 923. We agreed on no fee, and that is all that was received, and that was all that was considered at that time, because it was dismissed in August. Then a little later, in the fall, in October, the second suit was filed, then we were employed to defend the bank's suit upon the suit filed by the bank. We agreed with the royalty company jointly with Mr. John Davenport, who had been in the case, upon a $2,000.00 fee, half of it to be ours, and half to be his. Thereafter and before the filing of the cross action in February, 1931, and between those dates, as I recall, I asked for the first time to see the declaration of trust, and upon examining it and other matters which Mr. Scannell told me about, the facts as he understood them, I prepared, and in February filed this cross action. In the meantime, the bank had sued out a receivership, which by reference to the record, seems to have been January 9, 1931. That receivership was filed, assignments of error filed January 24, 1931, and the case was reversed some short time later, as reported in
2056 the 36th Southwestern Second, at page 1057.

We agreed upon a contingent fee as to the cross action distinguished between the defense of the note and the affirmative relief sought on cross action. The case was tried in 1932, and at that time I took a real estate mortgage upon the Oklahoma properties, specifically describing them, to secure the costs incident to an appeal. Later, and I think in 1933, Mr. Charles L. Black was employed, and given a deed of trust upon undescribed properties in Texas, to secure him in payment of $5,000.00 that was charged there, or as might be equivalent to a reasonable fee, and giving to me a second lien to secure such advances as I might make.

Mr. Black worked in this case, I am sure, at least thirty days. I was in Austin most of the time. He argued it and I did with other counsel, before a nine judge Court,

and I think Mr. Black earned the fee which he has received, and that his services were reasonably worth what he got.

As I recall, $1,250.00 was due him within a specified time, after the date of his employment. He did not receive that compensation. The deed of trust was foreclosed, with a view to his receiving compensation at a time when the bank had abstracted its judgment in several counties of the State, had levied upon and sold at sheriff's sale the Gray and Wheeler County Royalties, and were claiming title to them. And at
2057 a time when the value of those properties was unknown to me. And later the properties have proven valuable and I held the title as trustee to that which was bought at foreclosure sale and as additional security, intending no adverse title to the client which I represented. It was bought by me when Mr. Scannell was in the north on a donkey baseball venture. And upon the bank's filing a suit in cause No. 28,377, against Mr. Black and myself, and against the Royalty Company, seeking, as I recall, to invalidate the trustee's sale, seeking to establish title to the bank, under its foreclosure sale, and seeking to foreclose as against all of the assets of the royalty company, its judgment lien. The first pleading that we filed in that case was a disclaimer of any interest in the property, and there has been filed for record a release of the rights acquired, if any, by the recording of that trustee's deed.

Soon after obtaining their judgment in 1932, the plaintiff bank filed a lawsuit in Oklahoma, seeking to foreclose its judgment lien against the Oklahoma properties, and we pleaded the pendency of the appeal and in abatement of it. Made several trips over there, argued it before the Court, and finally prevented the bank's foreclosing its lien, and taking the title over to those properties.

For that service we charged and received $550.00, upon royalty Company's check No 1,049.00.

And for services in cause No. 28,377, we charged $500.00, and our part of the cash fee in 24,549
2058 being this case, is $1,000.00. In addition to that, we have charged certain expenses which I itemize here. We paid Mr. Davenport either direct or by indorsing the royalty company's check, $300.00, $200.00, $100.00, $68.05, $100.00 and $52.77, at the dates upon our checks as here shown, being a little more than his half of the fee, and I cannot account for our having paid him more than $1,000.00.

I have itemized here the days and dates, of all of the items of expense, and I have supporting checks which I exhibit to counsel.

We received the trust checks listed here, and entered them as credits as against the charges on the account.

I paid personally the district clerk for the transcript of $136.75. I paid the Court reporter $453.70 for the record. I paid the Railey Printing Company $435.00 for printing the brief in the Court of Civil Appeals and I paid Railey $135.00 for the printing of the application for the writ of error. There are other expenses which I have itemized here, and I have my supporting checks which I exhibit to counsel.

I received from the Royalty Company the amounts of money which I have itemized here. The result of it is that I personally paid out $3,120.22 and received $2,696.58. That my firm, Kilgore and Rogers has received $6,017.33 and expended, by the charges shown, $5,974.63, leaving a net fee in this lawsuit of $384.90.

Mr. Rogers:

I offer this in evidence.

(Marked "Defendant's Exhibit 191" as follows:)

2059 DEFENDANT'S EXHIBIT 191.

Recapitulation.

Receipts and Disbursements.

	D.	R.
Kilgore & Rogers:		
Receipts		$6,017.33
Disbursements	$5,974.63	
Guy Rogers:		
Receipts		2,696.58
Disbursements	$3,120.22	
	$9,094.85	$8,713.91
Partial fees to balance		380.94
	$9,094.85	$9,084.85

2060 Guy Rogers.

In account with Wichita Royalty Company.

	Dr.	Cr.
Paid Dist. Clerk for transcript	$136.75	$
Paid W. E. Donnelly, Court Reporter, for statement of Facts in #24549-B	453.70	
Paid Railey Printing Company for C. C. A. brief printing	435.00	
For App. Writ of Error Printing (Railey)	135.00	
2-16-32 Steno expense	2.50	
2-17-32 Steno expense	20.83	
3-29-32 Photostats	37.45	
4-16-32 Steno expense	27.50	
4-16-32 Photostats	4.20	

		Dr.	Cr.
4-22-32	Express on record to C. C. A.	1.07	
7-16-32	Steno expense	45.85	
10-18-32	Steno expense	18.16	
10-24-32	Steno expense	16.70	
11-19-32	Steno expense	22.93	
12-23-32	Steno expense	64.64	
2- 9-33	C. C. of Statement of Facts, Bacon v. Wright	6.20	
8- 7-34	Paid Chas. L. Black	250.00	
1- 4-35	Paid Chas. L. Black	250.00	
6-17-35	Paid Chas. L. Black	145.91	
12-19-35	Paid Chas. L. Black	287.52	
2-13-32	Paid Wichita Multigraphing Co.	2.50	
2-17-32	Paid Mrs. Birdie Zadik for steno exp.	20.83	
3-25-32	Paid Co. Clerk, Okmulgee County	4.25	
2-29-32	To John Davenport to balance joint fee	74.35	
6- 5-33	Paid Mollie Stipe for steno expense	3.00	
9- 2-33	To W. E. Donnelly	5.00	
9-11-33	To County Clk. Hughes County, Okla.	2.50	
12- 8-33	To County Clk. Navarro County	1.50	
12- 8-33	To County Clk. Eastland County	1.50	
12- 8-33	To County Clk. Young County	1.50	
12- 8-33	To County Clk. Archer County	1.50	
12-15-32	To W. E. Donnelly	25.00	
12-15-33	To County Clk. Okmulgee County	3.55	
12-15-33	To County Clk. Kay County, Okla., filing fee	2.55	
12-16-33	To County Clk. Gray County	2.00	

		Dr.	Cr.
4- 3-34	To County Clk. Wheeler County	2.00	
7- 2-35	To Milan E. Wallace, Auditor	42.50	
8- 6-35	To Driskill Hotel—G. R. Exp. at Austin	30.08	
9- 3-35	To A. C. Baldwin & Sons—Printing briefs	251.00	
9-17-36	To J. R. Wright, U. S. Marshal	6.00	
	Miscellaneous expense out of office	250.00	
	By checks as follows:		
2-16-32	No. 1030		148.71
2-16-32	No. 1031		750.00
12-31-32	5 Cashier's check		126.91
12-31-32	Cashier's check		126.11
12-31-32	Cashier's check		104.41
11-13-33	E. E. Scannell		277.84
12- 5-33	No. 1035		50.00
12-27-34	No. 1047		233.26
6- 1-35	Oil run checks		$354.09
6- 1-35	Cashier's check		203.84
6- 1-35	Cashier's check		158.16
6- 1-35	Cashier's check		148.25
9-15-36	No. 1006—expense, Dallas	$25.00	25.00
		$3,120.22	$2,696.58

Kilgore & Rogers.

In account with Wichita Royalty Company.

	Dr.	Cr.
To retainer, City Natl. Bank vs. Wichita Royalty Co.	100.00	
By check #923 in payment		100.00

		Dr.	Cr.
	To fee in case of City National Bank, Stephens County, Okla.	550.00	
	By check #1049 in payment		550.00
	To fee in trespass to try title and foreclosure lien case by City National Bank #28377-C	500.00	
	To fee in defense of City Nat'l Bank's suit on note, #24549-B	1000.00	
	To disbursements as follows:		
9-30-30	Check No. 501 to John Davenport	300.00	
10-16-30	Check No. 528 to John Davenport	200.00	
12-27-30	Check No. 624 to John Davenport	100.00	
4- 1-31	Check No. 741 to John Davenport	68.05	
5-26-31	Check No. 794 to John Davenport	100.00	
8- 6-31	Check No. 856 to John Davenport	52.77	
12-24-31	Check No. 668 to Dist. Clk. Wichita County Receivership tr.	30.75	
2- 2-31	To Check No. 680 First Natl. Bank for c. c. charter Texas Inv. Co.	5.00	
2-10-31	Check No. 684 to Dist. Clk. Wichita County for subpoena G. W. Peckham	1.20	
3- 3-31	Check No. 701 to Cleo Bowers, depositions	10.00	
3-30-31	Check No. 740 to Gene Sherrod—Trans testimony Harrell, Thomason & Abbott	17.00	
4- 6-31	Check No. 746 to Wichita Multigraphing Co. for forms	4.00	

		Dr.	Cr.
4-20-31	Check to First Natl. Bank for c. c. Geo. P.	30.50	
4-28-31	Check No. 766 to County Clk. Gray County for cert. copies	7.50	
4-28-31	Check No. 765 to Co. Clk. Wilbarger, c. c.	3.00	
4-28-31	Check No. 773 to Guarantee Abst. Co.	7.50	
5-14-31	Check No. 784 to W. Hy. Rogers, Abstracter	7.50	
	Check No. 792 to C. J. Meek	7.50	
5-19-32	Check No. 1095, Birdie Zadik, steno exp.	6.25	
6- 3-31	Check No. 804 to Wichita Multigraphing Co.	5.50	
8- 4-31	Check No. 888 to Joe E. Shelton, cert. copy deed from Porter to Knight	1.25	
9- 5-31	Check No. 892 to Noble Thomas, cert. copies	2.50	
9- 8-31	Check No. 895 to County Clk. Wheeler County Deed Bowden to Peckham	1.50	
12- 6-32	Check No. 1219 to County Clk. Kaufman Co. c. c. charge & verd. Bacon & Wright ...	1.25	
1- 7-33	Check No. 1247 Railway Express, exp. briefs	.44	
1-12-33	Check No. 1252 to Clk. Sup. Ct. c. c. testimony Bacon v. Wright	2.50	
1-30-33	Check No. 1265 Railway Express, Exp. Briefs	.47	
3-31-33	Check No. 1311 to Mrs. Zadik, steno exp.	29.00	
4-15-33	Check No. 1318 to Mrs. Zadik, steno exp.	50.00	
4-22-33	Check No. 1319 to Clerk C. C. A copy of opinion, Q. A. & P. vs. Bank	3.90	

	Dr.	Cr.
4-22-33 Check No. 1320 to Mrs. Zadik, steno exp.	25.00	
5- 8-34 Check No. 1539 to Cash for G. R. expense to Austin	35.00	
6- 8-34 Check to Clerk C. C. A. express deposit	5.00	
6- 7-34 Check to Driskill Hotel—G. R. expense at Austin	14.35	
6- 6-34 Check to Mrs. Walter Prechel, steno exp.	47.50	
6- 6-34 Check No. 1555, Mrs. Howard Bunch steno expense	40.00	
7- 2-35 Check No. 1861 to Railey's for brief	30.80	
7-28-35 Check No. 1876 to cash for G. R. expense to Austin	75.00	
8- 7-35 Check No. 1880 to Railway express for exp. on papers to Chas. L. Black	.53	
12-13-35 Check No. 2017 to Clerk Supreme Court, cert. copies of opinions	15.00	
7- 2-36 Draft—First Nat'l Bank, to sheriff Colorado Springs	4.95	
Sundry Tel. and Tel. Expense	30.74	
12-12-36 Paid Mollie Stipe, steno exp.	25.00	
12-17-36 Paid Wichita Falls Blue Print Co.	1.60	
By Wichita Royalty Company's checks as follows:		
9-29-30 Check No. 952		$600.00
10-16-30 Check No. 957		400.00
12-27-30 Check No. 971		200.00
13-14-31 Check No. 980		200.00
4-15-31 Check No. 990		100.00
5-20-31 Check No. 1000		100.00
8- 4-31 Check No. 1012		100.00

	Dr.	Cr.
5-31-36 Check No. 1060		750.00
12- 7-36 Check No. 1071		500.00
11-15-30 Check No. 965 indorsed to John Davenport	200.00	200.00
12- 9-33 Check No. 1036 Chas. L. Black	250.00	250.00
5-29-36 Check No. 1048 Chas. L. Black	500.00	500.00
4-25-35 Cashier's Check Chas. L. Black	115.48	115.48
5-31-36 Check No. 1053, c. c. #157684, Black	1351.85	1351.85
	$5974.63	$6017.33

2067 Mr. Rogers:

I also exhibit to counsel canceled checks in support of the items.

Cross Examination.

By Mr. Boone:

Out of our entire work, as reflected by this Exhibit, Defendant's Exhibit 191, I have netted $619.06, this particular case, and as shown, we have received $100.00 out of the first case filed and $550.00 out of another case. Whatever that statement shows is correct. The first fee was $100.00 on June 25, 1929; the next fee September 29, 1929 for $600.00; the next fee $400.00 October 16, 1929. The last two items were paid on this lawsuit—that is, paid on the bank's suit on the note. The $600.00 is allocated to the defense of this lawsuit rather than the first one; the $550.00 to the Oklahoma suit that the bank filed, and the trust voucher shows that to be its purpose. The $600.00 September 29, 1929, is allocated to this lawsuit. The $400.00 allocated to this lawsuit. $200.00 November 15, allocated to this lawsuit. The check. December 27, 1930, is credited to this lawsuit; March

14, 1931, credited to this lawsuit; April 15, 1931 for $100.00, credited to this lawsuit; May 20, 1931, $100.00 credited on this lawsuit; August 4, 1931, for $100.00, credited on this lawsuit; February 15, 1932, $148.71, on my individual personal account; February 15, 1932, $750.00, individually; December 5, 1933, $50.00 individually; December 27, 1934, $223.26, individually; May 31, 1936, $750.00, on the firm account; September 15, 1936, $25.00 individually; December 27, 1936, $500.00, the firm account; December 31, 1932, Journal Entry No. 1, $115.48, went to Charles L. Black; Journal Entry No. 8, $203.84, individually; Journal entry No. 11, $158.16, on my personal account. Journal entry No. 12, $148.25, on my personal account. Then I received from the clerk on May 28, 1936, $18.60, I personally did not receive that, I have no information about it, I received the check and turned it over to Mr. Scannell, I did not receive the money. May 28, 1936, $1,033.12, the same fact exists with reference to that, I received it and turned it over to Mr. Scannell. All of these checks listed, Guy Rogers, $85.50, $72.37, and John Kilgore, $80.10, and Guy Rogers, $11.53, $491.10, were just attorneys of record, and we received the checks and turned them over to Mr. Scannell; that was a release of a garnishment after the Supreme Court opinion and as attorney of record I received two checks and turned them over. Mr. Kilgore receipted for one or two of them.

2068

The first suit filed by the City National Bank, I looked over that petition. I looked over the photostatic copies of the checks that were given some time in June, 1930. The check for $600.00, September 29, 1930, is allocated to the defense of the bank's lawsuit in this case, as likewise the one October 16, 1930 for $400.00. The check for $1,000.00 October 16, 1930, I received that amount, but what portion of it, if any, this account shows, had been paid to Mr. Davenport, I am not certain, but the exhibits show definitely the day Mr. Davenport was paid.

2069

At the time I was employed in this case in 1930, I did not take it on a contingent basis. When it developed that perhaps there might be a cause of action against the bank, independent of the bank's suit on the note, I did take it on a contingent basis. It was between the filing of the bank's petition in October and the filing of the cross action in 1931, February 14. I have a copy of the contingent contract, I will hand you the original that was filed in the Courthouse, it was not acknowledged until February 23, 1931, and filed after that, or about that time. The clerk's docket will show when it was filed. It provides that I am to receive one-half of whatever is obtained by way of compromise, or whatever is recovered in this cause, upon the cross action, or whatever is recovered against Harrell or the bank. The payments to Mr. Black are reflected in my Exhibit 191, and approximate $3,500.00. He has been paid to date of judgment in the Supreme Court, that which accrued up to that time, it is to be paid only such further sums as he may earn prior to the final judgment in this case. He has answered a few inquiries of mine in respects to questions since the Supreme Court judgment. His charges are independent between him and the royalty company. When the case was tried in the lower Court, judgment was entered against the royalty company on this original note. Prior to the time of the entry of this judgment, I had had this contract of one-half of whatever I could recover. The royalty company
2070 did not supersede that judgment and the bank went forward under its judgment after the allotted time, as provided by law, to foreclose on some of the properties of the royalty company, and sold them under sheriff's sale, under the judgment, and the bank asserted title thereto. The Oklahoma mortgage and the Texas deed of trust are separate and bear different dates, and a substantial period of time between them. The mortgage on the Oklahoma property, as I recall, was as of the approximate date of the judgment and promptly filed and preceded any foreclosure on the part of the bank. The bank filed its suit to run an attachment on all of the

properties, they sued upon the judgment and foreclosed, as I recall, your attachment lien which you ran at the time of the filing of the suit. This mortgage was filed prior to the time the suit was filed. The deed of trust was given prior to the time of execution of the sale of the Texas property by the bank, given at the time of Mr. Black's employment, which I recall the fall of 1933, I am sure it was before any action was taken on the foreclosing of the Texas properties by the bank. The deed of trust was filed in several counties in Texas. When this case was appealed to the Court of Civil Appeals it was first affirmed, with five opinions, and it stayed there nearly two years. The Supreme Court granted a writ of error reversing and remanding the case, then I filed additional pleadings, and the case was carried to the Federal Court and is now here for trial.

2071 I do not endeavor to state an account between John Davenport and the Wichita Royalty Company, other than to the extent that our firm has paid him, the amount shown in Defendant's Exhibit 191. I show no payments that went direct from the Royalty Company to John Davenport, this contract is between Kilgore and Rogers and the Wichita Royalty Company, no one else has an interest in it, and I have not put it up as collateral for anything. E. E. Scannell has no interest in that contingent contract, and no one else, save Guy Rogers and John Kilgore.

Cross Examination.

By Mr. Humphrey:

One of the purposes of the suit, No. 28377-C, was to set aside this conveyance that was made from the trustee to me, as trustee of L. B. Rogers estate. The disclaimer was filed November 16, 1936, as a trustee of my father's estate. I have no recollection of the filing of the cross action in that suit, on behalf of myself and Mr. Black, to quiet title. My memory is that we did not. My remembrance is that no pleadings filed in that case by either Mr.

Black or myself, prior to the filing of the disclaimer, the Wichita Royalty Company pleaded in abatement of the suit, suggesting the pendency on appeal of the judgment upon which you declared, and my memory is that no pleading was filed in that case other than those pleas in abatement until the disclaimer. I may be wrong, I will try and check that up. But I said we had a valid mortgage on such properties as the Wichita Royalty Company might ultimately be shown to own, at the
2072 final determination of all of this litigation when it was determined what property should be repudiated, and what properties they did in fact own, and I do not have any personal recollection of our filing such pleading as you suggest. I bid this property in as trustee, or took title in my name as trustee of my father's estate, under his will. That purchase was made prior to the time the Supreme Court reversed and remanded this case, and the suit was pending at that time. I talked to Mr. Black about it, and he was past due some money, I have no independent recollection of what the facts are in respect to whether he requested me to foreclose.

Cross Examination.

By Mr. Morrow:

In the fall of 1930, I began to go into the matter rather intensively, and inquired into it and learned about the Marlborough Addition. Between the filing of this lawsuit in October and the filing of the cross action in February, and after having looked at the declaration of trust in the meantime, I did ascertain to the extent that the cross action was filed, the facts in respect to your inquiry. I found George Peckham had sold royalties to the royalty company. Mr. Scannell had the books and records of the Wichita Royalty Company, my client. I did not know then what kind or character of books were kept by the royalty company. The bank did not keep me from learning that fact. I had a right to look
2073 at my client's books. I learned George Peckham had been drawing a salary all these years. I

knew the bank was denying they owed the royalty company any money by way of deposit liability, on the contrary the bank was claiming that the royalty company was indebted to the bank on some notes.

Mr. Rogers:

I ask that the mandate of the Supreme Court be identified as an exhibit and that the last page be copied
2074 in the record. And in connection with that, state that the opinion of the Supreme Court attached to the certificate that is to be copied in the record, is reported, as I recall, in the 89 Southwestern (2) page 394.

(Marked "Defendant's Exhibit 192" as follows:)

DEFENDANT'S EXHIBIT 192.

The State of Texas.

To the District Court of Wichita County, Greetings:

Before our Supreme Court on the 11th day of December, A. D. 1935, the Cause, upon writ of error, to revise or reverse your judgment between Wichita Royalty Company, et al., Plaintiffs in Error, No. 6800 vs. The City National Bank of Wichita Falls, et al., Defendants in error. was determined; and therein our said Supreme Court made its order in these words:

This cause came on to be heard on writs of error to the Court of Civil Appeals for the Second Supreme Judicial District and the original transcript in said cause being before the Court as well as the transcript showing the proceedings had in said Court of Civil Appeals and these having been duly considered, because it is the opinion of the Court that, in part, there was error in the judgments of the Court of Civil Appeals and District
2075 Court, but, in part, there was no error in said judgments, it is therefore ordered, adjudged and

decreed that the judgments of the Court of Civil Appeals and District Court on both the direct and cross actions are reversed and the cause is remanded to the District Court for further proceedings in accordance with the instructions given in the opinion of this Court. It is further ordered that that part of the judgment denying recovery against the executors of J. A. Kemp's estate be affirmed, and that judgment be here rendered that said executors, Chas. I. Francis and Flora A. Kemp, go hence without day and recover their costs. It is further ordered that the defendants in error, City National Bank of Wichita Falls and J. T. Harrell, pay all costs in this behalf expended in this Court and the Court of Civil Appeals, and this decision, with a copy of the opinion herein delivered, be certified to the District Court for observance.

Wherefore we command you to observe the order of our said Supreme Court in this behalf, and in all things to have it duly recognized, obeyed and executed.

Witness the Hon. C. M. Cureton, Chief Justice of our Said Supreme Court, with the seal thereof annexed, at the City of Austin, this the 13th day of May, A. D. 1936.

(Seal) S. A. PHILQUIST,
Clerk.
By J. P. BYRNE,
Deputy.

(Indorsed on the back thereof) Dist. Court No. 24549-B
673 Received for Record May 14, 1936 R. L.
2076 Sanderford By ..... Garrett. Wichita Royalty Company, et al vs. The City National Bank of Wichita Falls, et al. Mandate Supreme Court of Texas 11-171-2 Issued May 13, 1936. S. A. Philquist, Clerk by J. P. Byrne, Deputy. To Wichita County.

Mr. Rogers:

In addition to the Supreme Court's original opinion in this case, the Court also rendered an opinion on a motion

for re-hearing, reported in 93 Southwestern (2), likewise, the Court in the case of Quanah Acme & Pacific Railway Company, on motion for re-hearing had some statement to make on the basis of liability in the Wichita Royalty Company case, it is likewise reported in 93 Southwestern (2).

Mr. Rogers:

I offer in evidence the contingent contract of Kilgore and Rogers, so that the record may express what the agreement is, rather than my verbal testimony from memory.

(Marked "Defendant's Exhibit 193" as follows:)

2077 DEFENDANT'S EXHIBIT 193.

The State of Texas,
County of Wichita.

Know All Men By These Presents: That Wichita Royalty Company has employed Kilgore and Rogers, a firm composed of John E. Kilgore and Guy Rogers, to defend the City National Bank's suit against it upon a $22,000.00 note more particularly described in Cause No. 24549-B pending in the local District Court, for the agreed consideration of $2,000.00, with $1,000.00 thereof having been paid.

Since this original agreement the Plaintiff Bank has, by amendment, sued upon another item of upwards of $14,000.00, seeking to hold Wichita Royalty Company liable as an indorser upon the note of the Texas Investment Company and a Receiver has been appointed and appeal therefrom taken. This company contemplates and will bring a Cross Action and/or suit against said Bank and/or J. T. Harrell and/or others for the recovery of moneys diverted from the company's account to the personal account of Geo. W. Peckham, and upon matters relating thereto.

For this additional service, the Company further agrees to give to Kilgore and Rogers, one-half of all they may recover on behalf of the company and/or collect by compromise and an undivided one-half interest in said cause of action and/or judgment and/or compromise is hereby transferred to Kilgore and Rogers with the understanding that no compromise can be made by said Attorneys without the approval of this company's trustee.

WICHITA ROYALTY COMPANY,
(Signed) By E. E. SCANNELL,
Trustee.

2078 The State of Texas,
County of Wichita.

Before Me, the undersigned, a Notary Public in and for Wichita County, Texas, on this day personally appeared E. E. Scannell, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as the act and deed of Wichita Royalty Company, a joint stock association, of Wichita Falls, Texas, and as the trustee thereof, and for the purposes and consideration therein expressed.

Given under my hand and seal of office this the 23rd day of February, A. D. 1931.

(Signed) PAULINE NOLTE,
(Seal) Notary Public Wichita Co. Texas.

The Witness:

I claim no title or right to any property under our mortgage, I think we would be entitled to a lien upon these properties which are ultimately determined to belong to the royalty company, as security for such, if any, unpaid balance of expenses and fees that we might be found to be entitled to. As far as I know, they do not owe Mr. Black anything, they owe my firm nothing except the balances as shown by this exhibit, such expenses
2079 as we are out incident to the trial of appeal of this case, either defending the appeal or prosecuting

one. It is true that the City National Bank filed an abstract of judgment in the various counties, they did not get out an execution within the year provided by the statute. It is true, it is my construction, that the appeal by the Wichita Royalty Company did not postpone the effectiveness of the judgment, abstract of judgment lien, beyond the period of one year, in the absence of execution, and you filed a lawsuit in trespass to try title for the identical properties that you had sold under that execution.

Re-Cross Examination.

By Mr. Boone:

The difference between the two figures, as shown from Exhibit 191, the total expenses due myself and John Kilgore, is $423.64, the exhibit reflects certain moneys were paid to me, for expenses.

With reference to Mr. Humphrey's question, it is my recollection that he told me he was going to get out execution, in the various counties on this property, and in fact, he did get out one on the Gray and Wheeler County property, then filed this other lawsuit. Up to that time we had repudiated the Gray and Wheeler transactions, and it was not intended that the deed of trust in Texas would cover property that had been repudiated. I worded it with that in view, because I did not want the
2080 instrument to have the effect of ratifying that which we were employed to disclaim. I explained that to Mr. Black and we so worded it as that there was no specific description of property, because I did not know what this company would be determined to own, whereas, in the Oklahoma mortgage, I did describe the property specifically.

2081 Mr. Rogers:

My testimony is that upon checking this with Mr. Lambert, it appears that on December 31, 1932,

Journal Entry No. 3, for $357.43, went direct to Charles L. Black, and my records nor my firm's records, do not show that we received that money; it appears that that amount of money plus that which my exhibit 191 shows to have gone to Mr. Black, totals within a very few dollars of $3,500.00, which was the amount which I thought he did receive. There is five or six dollars difference.

Mr. Rogers:

I wish to offer a question or two propounded to W. H. Peckham on the former trial, as follows:

"Q. Now, isn't it true, Mr. Peckham, that you and Mr. Scannell, for a long time, I do not mean to limit you to any particular time, but for a long time after Mr. Peckham's death, carried on a series of negotiations and conversations working toward the satisfactory adjustment of all of these matters so it would not come up and be generally known?

"A. Yes, sir.

"Q. That is true?

"A. That is true."

Mr. Humphrey:

We object to it because he is available as a witness and can be produced.

Mr. Boone:

Further, because it could not bind J. T. Harrell in any manner, because it would be ex parte as far as he is concerned.

2082 Mr. Humphrey:

We also adopt that objection.

Mr. Rogers:

We offer in evidence the interrogatories and answers propounded and answered by the witness J. J. Perkins, being interrogatories 58, 59 and 81, and the answers thereto.

(Marked "Defendant's Exhibit 195" as follows:)

DEFENDANT'S EXHIBIT 195.

Interrogatories 58, 59, and 81 propounded to J. J. Perkins and his answers thereto sworn to and filed by him September 25, 1936, are as follows:

When, during such period, did you, as a director consider that unless new funds were placed in the Bank, it would not be able long to withstand the continuance of such withdrawals?

What action did the officers and directors of the Bank take to meet such situation?

Answers to Interrogatories No. 58 and 59:

During the summer of 1931 the deposits of the City National Bank were shrinking quite rapidly and by Fall it was apparent that it would be necessary to obtain a large amount of funds, perhaps a million dollars, in order to safely meet the heavy withdrawals and keep the bank in liquid position.

An examination of the loans of the bank disclosed that nearly all of them had been made to local people
2083 and to force their collection would have meant bankruptcy to a large number of the makers of these obligations and would have greatly disturbed the feeling of unrest not only in Wichita Falls but in this entire section of the country.

The Board of Directors discussed this situation and decided to borrow the necessary funds by pleading the notes of the bank as collateral. In furtherance of this the Board of Directors signed a personal guarantee to the Federal Reserve Bank in Dallas for the sum of $750,000.00 to guarantee the repayment of any money loaned to the City National Bank of Wichita Falls by the Federal

Reserve Bank. Immediately after the signing of this guarantee the City National Bank borrowed from the Federal Reserve Bank of Dallas $460,000.00 and gave as collateral some of the notes receivable of the City National Bank. The personal guarantee of the Directors also served as an additional security on this loan.

At about the same time the City National Bank borrowed from the First National Bank of Wichita Falls $150,000.00 and the City National Bank executed its note for that amount and which note was indorsed by the Directors of The City National Bank, including myself.

We also borrowed from the First National
2084 Bank in Dallas $100,000.00 and this note was also indorsed by the City National Bank directors.

At a later date there had been some payments made on this loan and perhaps one or two renewals and some additional funds were borrowed from the First National Bank of Wichita Falls which, as I recall, were handled in the same way.

I do not have the details of these loans, nor the time at which they were paid, but I do know they have all long since been paid and were paid by the City National Bank. None of the indorsers upon said obligations either to the First National Bank of Wichita Falls, the First National Bank in Dallas or to the Federal Reserve Bank ever had to pay anything thereon but all of the obligations were satisfied and paid by the City National Bank.

Interrogatory No. 81:

Kindly detail and explain fully why it was that, as an interested party, you joined in the formation of a new "in" bank to succeed and oil "of" bank and in the liquidation of such old and established banking institution in this vicinity?

Answer to Interrogatory No. 81:

The owners of the stock of City National Bank were widely scattered and after going over the list of

2085 the stockholders there were many of the stockholders who could not pay an assessment on the stock of the old bank and some who probably would not without litigation, and after a full discussion, it was deemed best to organize a new bank to be known as the City National Bank of Wichita Falls. In using this name the bank could still have the advantage of the prestige of the old bank. The Reconstruction Finance Corporation purchased $400,000.00 preferred stock in the new institution and it was immediately given authority to begin business, which it did at the end of the banking holiday.

2086 Mr. Boone:

We offer this instrument in evidence, Defendant's Exhibit 194.

Legal Services.

Date	Check No.	C. L. Black	Guy Rogers	John Davenport	Grundy Shapard	E. E. Scannell
1929.						
12-31	868	.....	.....	.....	.....	400.00
1930.						
1-21	875	.....	.....	.....	.....	200.00
1-31	883	.....	.....	.....	.....	200.00
2-15	889	.....	.....	.....	.....	200.00
2-28	892	.....	.....	.....	.....	200.00
3-15	896	.....	.....	.....	.....	200.00
3-31	897	.....	.....	.....	.....	200.00
4-15	903	.....	.....	.....	.....	200.00
4-30	905	.....	.....	.....	.....	200.00
5-16	909	.....	.....	.....	.....	200.00
5-31	912	.....	.....	.....	.....	200.00
6-13	917 (Help)	....	.....	.....	.....	180.00
6-13	918	.....	.....	.....	.....	200.00
6-24	921	.....	.....	500.00	.....	.....
6-25	922	.....	.....	.....	.....	200.00
6-25	923	.....	100.00	.....	.....	.....

1790

7-16	931	.....	.....	.....	.....	200.00
7-17	932	.....	.....	200.00	.....	.....
7-31	936	.....	.....	.....	.....	200.00
8-15	939	.....	.....	.....	.....	200.00
8-30	940	.....	.....	.....	.....	200.00
9- 2	941	.....	.....	250.00	.....	.....
9-18	949	.....	.....	.....	.....	200.00
9-29	952	.....	600.00	.....	.....	.....
9-29	953	.....	.....	.....	.....	400.00
10-16	957	.....	400.00	.....	.....	.....
10-16	958	.....	.....	.....	.....	200.00
11-14	963	.....	.....	.....	.....	200.00
11-15	965	.....	200.00	.....	.....	.....
12- 1	968	.....	.....	.....	.....	200.00
12-15	969	.....	.....	.....	.....	200.00
12-27	971	.....	200.00	.....	.....	.....
12-30	973	.....	.....	.....	.....	200.00
1931.						
1- 9	974	.....	.....	.....	.....	145.00
1-14	978	.....	.....	.....	.....	255.00
3-14	980	.....	200.00	.....	.....	.....
3-24	983	.....	.....	.....	.....	100.00

Date	Check No.	C. L. Black	Guy Rogers	John Davenport	Grundy Shapard	E. E. Scannell
4- 1	986	.....	.....	.....	.....	150.00
4-15	990	.....	100.00	.....	.....	.....
4-15	992	.....	.....	.....	.....	200.00
4-20	994	.....	.....	.....	.....	100.00
5-20	999	.....	.....	.....	.....	200.00
5-20	1000	.....	100.00	.....	.....	.....
6-12	1005	.....	.....	.....	.....	140.00
6-15	1006	.....	.....	.....	.....	60.00
7- 1	1008	.....	.....	.....	.....	200.00
8- 4	1012	.....	100.00	.....	.....	.....
7-31	1013	.....	.....	.....	.....	200.00
8-31	1016	.....	.....	.....	.....	200.00
10- 1	1018	.....	.....	.....	.....	200.00
10- 7	1020	.....	.....	.....	.....	3.35
10-29	1023	.....	.....	.....	.....	200.00
12- 1	1026	.....	.....	.....	.....	200.00
1932.						
1- 1	1027	.....	.....	.....	.....	200.00
2- 2	1028	.....	.....	.....	.....	200.00
2-16	1030	.....	148.71	.....	.....	.....
2-16	1031	.....	750.00	.....	.....	.....
2-25	1032	.....	.....	.....	.....	95.00

1933.						
12- 5	1035	.....	50.00	.....	.....	.....
12- 9	1036	250.00	.....	.....	.....	.....
1934.						
2-23	1042	.....	.....	.....	.....	150.00
2-28	1043	.....	.....	.....	.....	150.00
4-14	1044	.....	.....	.....	.....	256.94
6- 6	1045	.....	.....	.....	.....	273.56
10-20	1046	.....	.....	.....	.....	578.39
12-27	1047	.....	223.26	.....	.....	.....
1936.						
5-29	1048	500.00				
5-29	1049	.....	550.00	.....	.....	.....
5-29	1050	(Charged to Cash on Hand)				541.92
5-29	1051	.....	.....	.....	.....	2,860.56
5-31	1052	.....	.....	.....	.....	28.90
5-31	1052	1,351.85				
5-31	1054	(Charged to Cash on Hand)				1,508.71
5-31	1055	(Charged to Cash on Hand)				563.47
5-31	1059	.....	.....	.....	750.00	.....
5-31	1060	.....	750.00	.....	.....	.....

Date		Check No.	C. L. Black	Guy Rogers	John Davenport	Grundy Shapard	E. E. Scannell
6-30		1061	.....	.....	.....	.....	69.55
7- 6		1064	.....	.....	.....	.....	50.00
9-15		1066	.....	25.00	.....	.....	.....
9-15		1067	.....	.....	.....	35.00	.....
10-27		1068	.....	.....	.....	500.00	.....
12- 7		1070	.....	.....	.....	300.00	.....
12- 7		1071	.....	500.00	.....	.....	.....
1937.							
1- 5		1072	.....	.....	.....	.....	109.81
	Items						
	Cash Sundry						
5-31-32			.....	.....	.....	.....	50.00
5-31-32	(Cash on Hand) 1,359.57 (Oil runs—JE #14)		.....	.....	.....	.....	.....
12-31-32	JE #3		.....	357.43	.....	.....	.....
5-31-33			.....	.....	.....	.....	1,015.04
9-15-33	(Cash on Hand) 380.00 (Oil runs—JE #2)		.....	.....	.....	.....	.....
9-30-33			.....	.....	.....	.....	380.80
12-24-33	(Cash on Hand) 131.41 (Oil runs—JE #4)		.....	.....	.....	.....	.....

1934-35.					
JE #1	.....	115.48	.....	.....	.....
JE #2	.....	.....	.....	.....	108.58
JE #6 runs to K & R, Apr. 1935		354.09	.....	.....	.....
JE #8	.....	203.84	.....	.....	.....
JE #11	.....	158.16	.....	.....	.....
JE #12	.....	148.25	.....	.....	.....
JE #14	.....	.....	.....	.....	250.00
1935-36.					
Cash J. Entries					
581.56 (From Oil runs etc.)		.....	.....	.....	.....
Cash (Closing JE)	.....	.....	.....	500.00	.....
Totals	$2,101.85	$6,334.22	$950.00	$2,085.00	$17,574.58

Note: The above amounts do not include the value of oil properties, if any, transferred from the company to the above parties. Nor is there included the
2092 value of oil runs from properties of the Wichita Royalty Company and paid directly to said parties. Against the three checks issued to E. E. Scannell in May, 1936, and totaling $2,614.10, he is to be credited with such portion of same as was applied to company expenses. The foregoing does not include any cash paid to the individuals since June 1, 1936.

In addition to the foregoing items the District Clerk of Wichita County, Texas, in Cause No. 27856-B, paid the following sums for the benefit of the Wichita Royalty Company:

Date.	How Paid.	Funds Delivered to.	Amount.
5-28-36	Clerk's Check	Guy Rogers	18.60
5-28-36	Oil Company check indorsed by Clerk	Do.	1,033.12
6- 5-36	Do.	E. E. Scannell	2,640.13
6- 2-36	Do.	Guy Rogers	85.56
6-13-36	Do.	Do.	72.37
7-10-36	Do.	J. Kilgore	80.10
10-26-36	Do.	Guy Rogers	11.53
6-13-36	Clerk's Check (C. N. B. Judgment)	Do.	491.10

Without further information and records, the disposition of the above funds may not be determined as between the Royalty Company and the parties actually taking physical receipt of the above items.

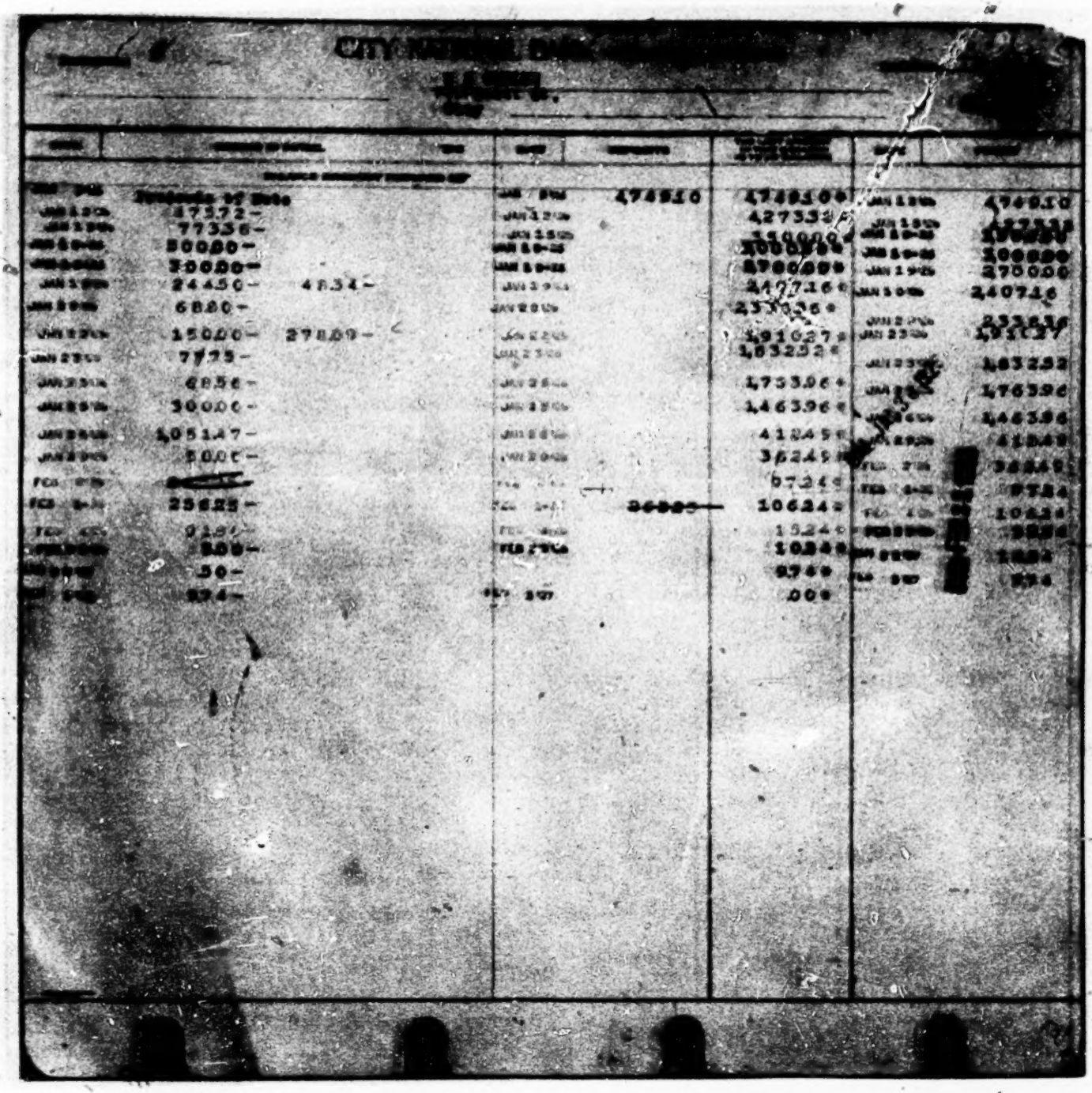
2093 In the District Court of the United States, Northern District of Texas, Wichita Falls Division.

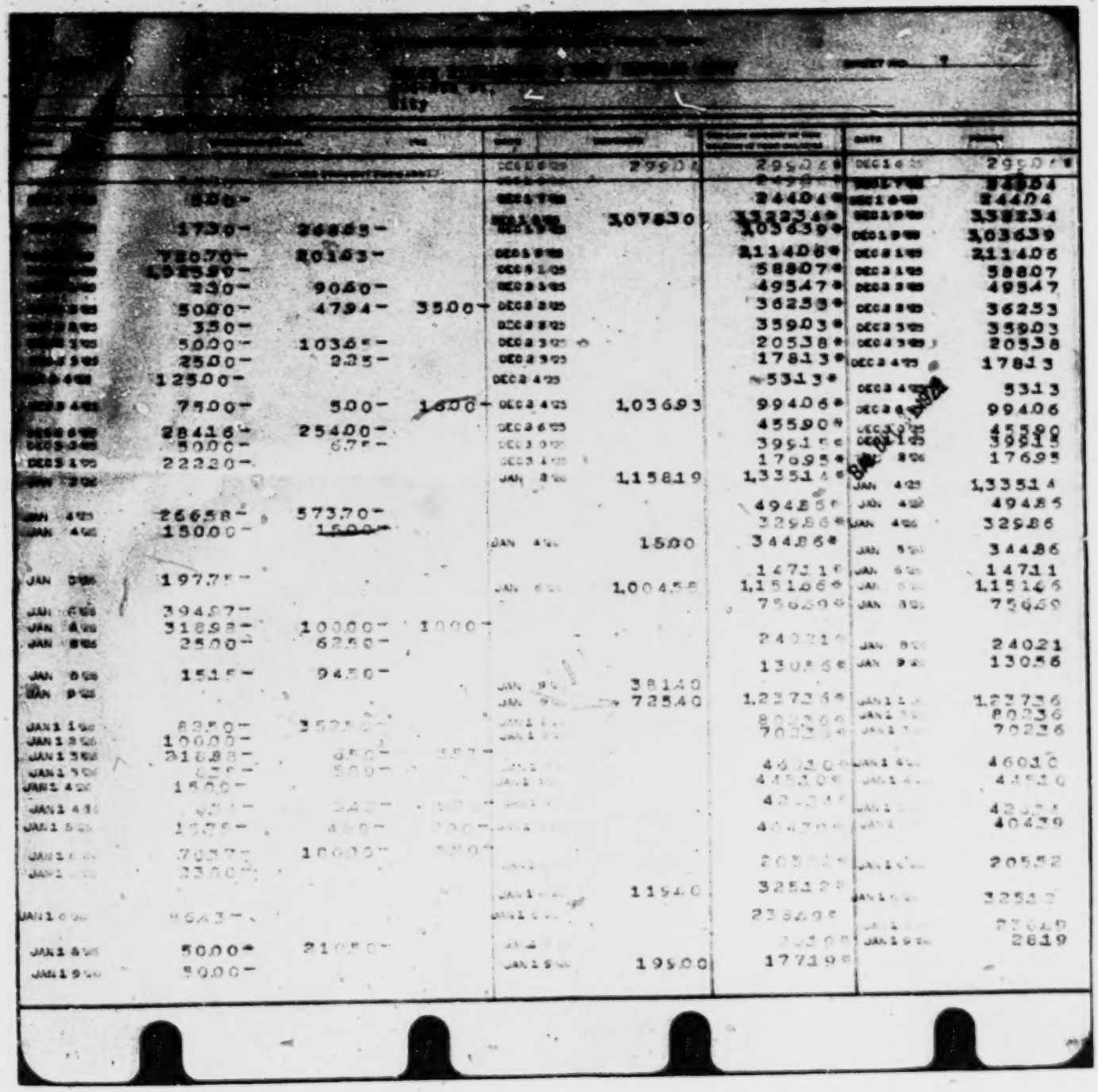
City Nat'l Bank of Wichita Falls,
vs.
Wichita Royalty Company, et al.

Mr. Rogers:

We now wish to offer in evidence photostatic copies of the deposit account of W. S. Curlee, and Welch, Richardson & Kemp, for the month of January, 1926, showing upon that date the deposit to those accounts of the two checks of $2,675.00 that are in evidence, and these are but the corresponding bank records showing their entry and I offer them in evidence.

(Marked "Defendant's Exhibits A & B" as follows:)





2096 Mr. Rogers:

In that connection, with those several accounts and in connection with certain testimony, we offer in evidence the checks that are identified by the records, in order of their issuance, being only checks that are identified by this record, as involved in this controversy, directly or indirectly.

(Marked "Defendant's Exhibit C" as follows:)

DEFENDANT'S EXHIBIT C.

(Consisting of a number of checks, numbered 1 to 1339, drawn on the City National Bank and signed by E. E. Scannell for trustee, except checks Nos. 102, 463, and 466, which are drawn on the Security National Bank and signed by E. E. Scannell, for trustee, and checks Nos. 531, 550, 653 and 670, which are drawn on the City National Bank and signed by G. W. Peckham, trustee.

Dated.	No.	Payee.	Amount.	Perforated.	Indorsement.
6-15-23	1	B. L. Fain	5,000.00	6- 5-23	B. L. Fain
6-15-23	2	W. H. Peckham	1,020.00	6- 7-23	W. H. Peckham
6-15-23	3	B. L. Fain	2,533.33	6- 7-23	B. L. Fain
6-27-23	9	City Nat'l	10,308.34	6-26-23	None
7- 3-23	13	Geo. W. Peckham	500.00	7- 5-23	Geo. W. Peckham
7- 5-23	17	B. L. Fain	5,133.33	7- 6-23	B. L. Fain
7- 6-23	18	City Nat'l	505.00	7- 6-23	None
7- 9-23	20	B. L. Fain	2,550.00	7- 9-23	B. L. Fain
8- 1-23	34	G. W. Peckham	500.00	8- 3-23	G. W. Peckham
8- 2-23	36	B. L. Fain	4,627.11	8- 3-23	B. L. Fain
8- 1-23	37	B. L. Fain	5,166.65	8- 3-23	B. L. Fain
8-14-23	46	W. H. Peckham	9,219.51	8-14-23	W. H. Peckham, G. W. Peckham

Dated.	No.	Payee.	Amount.	Perforated.	Indorsement.
8-14-23	47	B. L. Fain	1,560.00	8-14-23	B. L. Fain, G. W. Peckham
8-14-23	48	W. H. Peckham	1,033.33	8-14-23	W. H. Peckham, G. W. Peckham
8-14-23	49	B. L. Fain	4,120.97	8-14-23	B. L. Fain, G. W. Peckham
8-15-23	51	City Nat'l	15,000.00	8-15-23	None
8-31-23	54	G. W. Peckham	500.00	9- 1-23	G. W. Peckham
9- 1-23	58	City Nat'l	5,000.00	9- 1-23	None
9-30-23	73	G. W. Peckham	500.00	10-16-23	G. W. Peckham
9-29-23	74	B. L. Fain	2,000.00	10- 1-23	B. L. Fain
10-17-23	85	B. L. Fain	2,000.00	10-18-23	B. L. Fain
10-20-23	86	City Nat'l	5,000.00	10-20-23	None
10-27-23	88	B. L. Fain	1,500.00	10-29-23	B. L. Fain
10-31-23	92	G. W. Peckham	500.00	11- 1-23	G. W. Peckham
11-14-23	101	City Nat'l	2,200.00	11-16-23	None
11-14-23	102	City Nat'l (Drawn on Security Nat'l)	500.00	11-16-23	None
11-30-23	115	G. W. Peckham	500.00	12- 1-23	G. W. Peckham
12- 3-23	120	B. L. Fain	1,520.00	12- 4-23	B. L. Fain
12-19-23	134	G. W. Peckham	500.00	12-24-23	G. W. Peckham
1-19-24	147	City Nat'l	5,000.00	1-16-24	G. W. Peckham

1-30-24	149	Geo. W. Peckham	500.00	1-31-24	G. W. Peckham
2- 2-24	154	B. L. Fain	12,000.00	2- 2-24	B. L. Fain
2- 9-24	160	G. W. Peckham	2,500.00	2-11-24	G. W. Peckham
2-29-24	169	G. W. Peckham	1,200.00	2-29-24	G. W. Peckham
3- 1-24	171	G. W. Peckham	500.00	3- 4-23	G. W. Peckham
3- 1-24	180	G. W. Peckham	30.95	3-13-24	G. W. Peckham
3-31-24	188	G. W. Peckham	500.00	3-29-24	G. W. Peckham
3-17-24	185	G. W. Peckham	9,250.00	3-18-24	G. W. Peckham
4-30-24	205	G. W. Peckham	500.00	5- 1-24	G. W. Peckham
5-31-24	221	G. W. Peckham	500.00	5-31-24	G. W. Peckham
6-28-24	232	G. W. Peckham	500.00	6-28-24	G. W. Peckham
7- 2-24	237	Security Nat'l	11,000.00	7- 3-24	None
7-24-24	246	Security Nat'l	10,000.00	7-26-24	None
7-30-24	247	G. W. Peckham	500.00	7-31-24	G. W. Peckham
7-31-24	251	G. W. Peckham	55.35	7-31-24	G. W. Peckham
9- 3-24	261	G. W. Peckham	500.00	9- 3-24	G. W. Peckham
9-15-24	265	Security Nat'l	434.37	9-15-24	B. L. Fain
9-30-24	272	G. W. Peckham	500.00	10-18-24	G. W. Peckham
10-22-24	284	City Nat'l	7,802.50	10-21-24	None
10-23-24	285	City Nat'l	2,500.00	10-22-24	None
10-31-24	286	G. W. Peckham	500.00	10-31-24	G. W. Peckham
11- 7-24	293	City Nat'l	2,000.00	11- 8-24	None
11-17-24	299	City Nat'l	1,500.00	11-17-24	None

Dated.	No.	Payee.	Amount.	Perforated.	Indorsement.
11-29-24	303	City Nat'l	1,528.89	11-29-24	None
11-29-24	304	G. W. Peckham	500.00	11-29-24	G. W. Peckham
12- 4-24	309	B. L. Fain	9,000.00	12- 4-24	B. L. Fain
12-23-24	317	G. W. Peckham	695.00	12-23-24	G. W. Peckham
12-31-24	320	G. W. Peckham	500.00	1- 3-25	G. W. Peckham
2- 4-25	338	G. W. Peckham	400.00	2- 5-25	G. W. Peckham
2-18-25	344	City Nat'l	10,168.90	2-18-25	None
2-25-25	347	G. W. Peckham	400.00	3- 5-25	G. W. Peckham
3-31-25	357	G. W. Peckham	400.00	4- 2-25	G. W. Peckham
4-30-25	370	G. W. Peckham	400.00	5- 2-25	G. W. Peckham
5- 5-25	373	G. W. Peckham	2,500.00	5- 5-25	G. W. Peckham
5-25-25	378	G. W. Peckham	400.00	6- 2-25	G. W. Peckham
6-19-25	384a	City Nat'l	8,122.67	6-19-25	None
6-24-25	385	G. W. Peckham	6,000.00	6-25-25	G. W. Peckham
6-29-25	387	G. W. Peckham	5,000.00	6-29-25	G. W. Peckham
6-30-25	388	G. W. Peckham	400.00	7- 7-25	G. W. Peckham
7-20-25	398	G. W. Peckham	10.00	7-27-25	G. W. Peckham
7-31-25	400	G. W. Peckham	400.00	8- 3-25	G. W. Peckham
8- 8-25	406	City Nat'l	10,000.00	8- 8-25	None
8-24-25	408	City Nat'l	4,867.78	8-24-25	None
8-31-25	411	G. W. Peckham	400.00	9-10-25	G. W. Peckham
9-30-25	422	G. W. Peckham	400.00	9-30-25	G. W. Peckham

10- 8-25	427	City Nat'l	5,500.00	10- 8-25	None
10-31-25	433	G. W. Peckham	400.00	11- 2-25	G. W. Peckham
11- 6-25	438	G. W. Peckham	4.75	11- 7-25	G. W. Peckham
12- 1-25	444	G. W. Peckham	400.00	12- 3-25	G. W. Peckham
12-28-25	451	City Nat'l	1,250.00	12-28-25	Cr to a/c G. W. Peckham
1- 4-25-6	452	G. W. Peckham	5,000.00	1- 4-26	G. W. Peckham
12-31-25	453	G. W. Peckham	400.00	12-31-25	G. W. Peckham
1-11-26	458	City Nat'l	5,000.00	1-11-26	None
1-18-26	461	City Nat'l	15,769.07	1-18-26	None
1-16-26	462	E. E. Scannell	1,200.00	1-18-26	E. E. Scannell
1-18-26	463	E. E. Scannell ..... (Drawn on Security Nat'l)	300.00	1-18-26	E. E. Scannell
1-19-26	464	E. E. Scannell	400.00	1-20-26	E. E. Scannell
1-30-26	466	G. W. Peckham ..... (Drawn on Security Nat'l)	400.00	5- 3-26	G. W. Peckham
2-27-26	477	G. W. Peckham	400.00	2-27-26	G. W. Peckham
3- 6-26	478	City Nat'l	17,623.70	3-16-26	None
3- 6-26	479	Security Nat'l	6,000.00	3-10-26	None
3-31-26	485	City Nat'l	7,500.00	3-31-26	None
4- 1-26	487	G. W. Peckham	400.00	4- 3-26	G. W. Peckham
4-23-26	495	City Nat'l	300.00	4-23-26	None
5- 3-26	497	G. W. Peckham	400.00	5- 5-26	G. W. Peckham

Dated.	No.	Payee.	Amount.	Perforated.	Indorsement.
5-20-26	503	G. W. Peckham	3,000.00	5-20-26	G. W. Peckham
5-30-26	505	G. W. Peckham	400.00	5-29-26	G. W. Peckham
5-29-26	506	City Nat'l	500.00	6- 2-26	None
5-29-26	507	City Nat'l	1,500.00	6- 2-26	G. W. Peckham
6-16-26	510	City Nat'l	4,500.00	6-16-26	None
6-30-26	512	G. W. Peckham	400.00	7- 6-26	G. W. Peckham
7-13-26	519	City Nat'l	1,000.00	7-15-26	None
7-16-26	521	City Nat'l	300.00	7-17-26	None
7-31-26	523	G. W. Peckham	400.00	8- 2-26	G. W. Peckham
8- 2-26	525	City Nat'l	4,000.00	8- 2-26	None
8-20-26	529	G. W. Peckham	400.00	8-30-26	G. W. Peckham by E. E. Scannell
8-27-26	531	City Nat'l	500.00	8-30-26	None
		(Signed Wichita Royalty Company by G. W. Peckham trustee.)			
8-27-26	532	City Nat'l	4,357.58	8-27-26	None
		(Signed Wichita Royalty Company by G. W. Peckham trustee.)			
9-30-26	537	G. W. Peckham	400.00	9-30-26	G. W. Peckham
10-13-26	540	City Nat'l	300.00	10-19-26	None
10-13-26	541	City Nat'l	10,000.00	10-14-26	None
10-30-26	545	G. W. Peckham	400.00	10-30-26	G. W. Peckham
11-20-26	550	City Nat'l	7,500.00	11-20-26	Deposited to Cr of G. W. Peckham
		(Signed Wichita Royalty Company by G. W. Peckham trustee.)			

11-30-26	552	G. W. Peckham	400.00	12- 2-26	G. W. Peckham
12- 2-26	554	City Nat'l	1,500.00	12- 2-26	G. W. Peckham by A. B.
12-22-26	556	G. W. Peckham	700.00	12-22-26	G. W. Peckham
12-22-26	556a	G. W. Peckham	538.16	1- 4-27	G. W. Peckham
12- 7-26	557	City Nat'l	1,920.00	12-15-27	None
12-31-26	564	G. W. Peckham	400.00	1- 4-27	G. W. Peckham
1-11-27	569	City Nat'l	300.00	1-15-27	None
1-19-27	571	City Nat'l	2,000.00	1-19-27	None
1-31-27	574	G. W. Peckham	400.00	2- 2-27	G. W. Peckham
2-19-27	579	City Nat'l	2,500.00	2-19-27	None
2-28-27	581	G. W. Peckham	400.00	3- 3-27	G. W. Peckham
3- 1-27	582	City Nat'l	500.00	3- 8-27	None
3- 1-27	583	City Nat'l	301.82	2-16-27	G. W. Peckham
3- 1-27	584	City Nat'l	500.00	3- 3-27	None
3-23-27	591	City Nat'l	2,000.00	3-23-27	G. W. Peckham
3-31-27	594	G. W. Peckham	400.00	4- 2-27	G. W. Peckham
4-11-27	598	B. L. Fain	500.00	4-12-27	B. L. Fain
4-14-27	599	City Nat'l	300.00	4-23-27	None
4-23-27	602	B. L. Fain	1,000.00	4-23-27	B. L. Fain, G. W. Peckham

Dated.	No.	Payee.	Amount.	Perforated.	Indorsement.
4-30-27	604	G. W. Peckham	400.00	4-30-27	G. W. Peckham
5- 6-27	307	B. L. Fain	500.00	5- 6-27	B. L. Fain, G. W. Peckham
5-16-27	610	B. L. Fain	1,000.00	5-16-27	B. L. Fain, G. W. Peckham
5-31-27	614	G. W. Peckham	400.00	6- 8-27	G. W. Peckham
6- 8-27	615	City Nat'l	500.00	6- 8-27	None
6-18-27	620	City Nat'l	1,200.00	8-18-27	None
6-30-27	623	G. W. Peckham	400.00	7- 1-27	G. W. Peckham
7-16-27	628	City Nat'l	1,500.00	7-16-27	None
7-31-27	630	G. W. Peckham	400.00	8- 1-27	G. W. Peckham
8-16-27	635	City Nat'l	1,500.00	8-16-27	None
		(Signed Wichita Royalty Company by G. W. Peckham Trustee.)			
9- 3-27	637	G. W. Peckham	400.00	9- 6-27	G. W. Peckham
9-30-27	643	G. W. Peckham	400.00	10- 3-27	G. W. Peckham
10- 1-27	644	G. W. Peckham	62.85	10- 1-27	G. W. Peckham
10-14-27	650	City Nat'l	2,400.00	10-15-27	None
11- 1-27	653	G. W. Peckham	400.00	11- 5-27	G. W. Peckham
11-25-27	657	City Nat'l	1,800.00	11-25-27	None
11-30-27	659	G. W. Peckham	400.00	12- 3-27	G. W. Peckham
12-20-27	670	G. W. Peckham	147.33	12-21-27	G. W. Peckham
		(Signed Wichita Royalty Company by G. W. Peckham Trustee.)			

12-27-27	672	G. W. Peckham	400.00	12-27-27	G. W. Peckham
1-28-28	682	City Nat'l	2,000.00	1-28-28	None
1-31-28	684	G. W. Peckham	400.00	1-31-28	G. W. Peckham
2-29-28	692	G. W. Peckham	400.00	3- 6-28	G. W. Peckham
3-31-28	701	G. W. Peckham	400.00	3-31-28	G. W. Peckham
4- 6-28	702	City Nat'l	548.12	4- 6-28	None
4-11-28	706	G. W. Peckham	169.75	4-11-28	G. W. Peckham
11-20-28	710	City Nat'l	1,850.00	4-23-28	None
4-30-28	713	G. W. Peckham	400.00	5- 1-28	G. W. Peckham
5-17-28	717	City Nat'l	220.00	5-17-28	None
5-21-28	718	G. W. Peckham	140.68	5-21-28	G. W. Peckham
5-31-28	720	G. W. Peckham	400.00	6-12-28	G. W. Peckham
6- 1-28	721	City Nat'l	424.66	6- 1-28	None
7- 2-28	727	G. W. Peckham	400.00	7- 9-28	G. W. Peckham
7-23-28	733	City Nat'l	220.00	7-23-28	None
7-31-28	738	G. W. Peckham	400.00	8- 7-28	G. W. Peckham
8-31-28	747	G. W. Peckham	400.00	9-10-28	G. W. Peckham
9-27-28	752	City Nat'l Bank	424.66	9-27-28	Deposited in City Nat'l Bank a/co G. W. Peckham
10- 1-28	754	G. W. Peckham	400.00	10-12-28	G. W. Peckham
10-31-28	762	G. W. Peckham	400.00	11- 1-28	G. W. Peckham
11-30-28	767	G. W. Peckham	400.00	illegible	G. W. Peckham

Dated.	No.	Payee.	Amount.	Perforated.	Indorsement.
12- 4-28	768	City Nat'l	2,000.00	12- 4-28	None
12-31-28	775	G. W. Peckham	400.00	12-31-28	G. W. Peckham
1-14-29	778	G. W. Peckham	21.63	2- 5-29	G. W. Peckham
1-30-29	785	G. W. Peckham	400.00	2- 5-29	G. W. Peckham
2-19-29	791	City Nat'l	1,500.00	2-23-29	None
3- 1-29	793	G. W. Peckham	400.00	3- 8-29	G. W. Peckham
3-26-29	797	G. W. Peckham	400.00	3-26-29	G. W. Peckham
4-30-29	806	G. W. Peckham	400.00	5- 1-29	G. W. Peckham
5-31-29	813	G. W. Peckham	400.00	5-31-29	G. W. Peckham
6- 7-29	814	City Nat'l	1,500.00	6- 8-29	None.
7- 1-29	821	G. W. Peckham	400.00	7- 9-29	G. W. Peckham
7-15-29	824	City Nat'l	212.49	7-15-29	None
7-31-29	829	G. W. Peckham	400.00	8-29-29	G. W. Peckham
8-30-29	836	City Nat'l	1,000.00	8-29-29	None
8-30-29	837	G. W. Peckham	400.00	9- 5-29	G. W. Peckham
9-30-29	843	G. W. Peckham	400.00	10- 2-29	G. W. Peckham
10-31-29	852	G. W. Peckham	400.00	11- 1-29	G. W. Peckham
11-23-29	856	City Nat'l	1,500.00	11-23-29	None
11-29-29	857	Knight & Hines	84.41	11-29-29	Knight & Hines
1-24-30	880	Marlborough Add.	1,500.00	1-25-30	Marlborough Addition Texas Inv. Co. of Wichita Falls

2-24-30	890	City Nat'l	1,000.00	2-24-30	None
4-10-30	898	City Nat'l	1,000.00	4-10-30	None
5-13-30	908	Tex. Inv. Co. of W. F.	500.00	5-14-30	c/o Texas Inv. Co.
6-14-30	920	City Nat'l	1,500.00	6-18-30	None
7-14-30	930	City Nat'l	3,055.42	7-16-30	None
12-17-30	970	W. T. Knight, Atty. in Fact	102.83	12-20-30	W. T. Knight, Atty. in Fact. Knight & Hines by O. H. Hines
3-10-23	1253	City Nat'l	2,500.00	3-10-23	Cr a/c B. L. Fain
3-13-23	1262	G. W. Peckham	52.25	3-14-23	G. W. Peckham
3-13-23	1263	City Nat'l	4,129.84	3-14-23	cr. a/c B. L. Fain
3-16-23	1267	City Nat'l	1,053.33	3-17-23	None
3-20-23	1272	City Nat'l	500.00	3-20-23	None
3-27-23	1276	B. L. Fain	7,550.00	3-27-23	B. L. Fain
3-31-23	1280	G. W. Peckham	500.00	4- 2-23	Geo. W. Peckham
4- 2-23	1281	City Nat'l	1,520.00	4- 2-23	None
4- 2-23	1282	City Nat'l	1,006.67	4- 2-23	None
4-10-23	1291	G. W. Peckham	2,516.67	4-10-23	G. W. Peckham
4- 9-23	1292	City Nat'l	1,520.00	4-10-23	None
4-13-23	1293	City Nat'l	5,000.00	4-14-23	None
4-14-23	1294	City Nat'l	10,000.00	4-14-23	None
4-19-23	1299	B. L. Fain	10,000.00	4-20-23	None
4-25-23	1302	W. H. Peckham	1,011.34	4-26-23	W. H. Peckham

Dated.	No.	Payee.	Amount.	Perforated.	Indorsement.
4-25-23	1303	B. L. Fain	1,526.66	4-26-23	B. L. Fain
4-27-23	1304	B. L. Fain	5,066.66	4-28-23	B. L. Fain
5- 1-23	1310	G. W. Peckham	500.00	5- 6-23	G. W. Peckham
5- 2-23	1314	City Nat'l	1,587.90	5- 2-23	None
5- 7-23	1319	B. L. Fain	1,258.33	5- 7-23	B. L. Fain
5- 8-23	1322	Geo. W. Peckham	400.00	5- 8-23	George W. Peckham
5-11-23	1325	Geo. W. Peckham	2,533.33	5-11-23	George W. Peckham
5-24-23	1333	Security Nat'l	5,100.00	5-25-23	For deposit to cr of B. L. Fain
6- 1-23	1339	G. W. Peckham	500.00	6- 2-23	G. W. Peckham

Mr. Rogers:

We offer in evidence the work sheet of Mr. Duncan, it is a schedule in connection with the income tax report of J. T. Harrell for the taxable year 1926, as prepared by Mr. Duncan, showing on the first page the income and deductions and net community gain, and I offer the instrument in evidence as Defendant's Exhibit D.

DEFENDANT'S EXHIBIT D.

Data
Income Tax Return
1926.

Memo.—J. T. H.

2107 Statement of Income and Deductions, 1926.

Income—		
Cowling sale profit		$6,944.24
Cowling interest received		1,167.57
Dividends received		4,599.34
Salary and Bonus received		7,875.00
Interest received		4,636.71
Sale of royalty—no cost		7,500.00
Payments in oil on prior sales—Verschoyle		1,305.09
Moore County lease profit on sales		3,565.00
Texhoma Oil & Refining Co. stock sale profit		7,448.83
Marlow and O'Neil tracts profit		10,052.80
Vernon oil runs	$1,110.75	
Less 27½% depletion	277.68	833.07
Green oil runs		215.21

McCarty oil runs		4,235.83	
Less:			
Operating expense	1165.89		
Depreciation	375.00	1,540.89	
		$2,694.94	
Less: Depletion at 27½%		1,164.84	1,530.10
			$57,672.96
Deductions—			
Seay lease loss		$1,965.77	
Marlborough loss		1,455.89	
Burlington forfeit		500.00	
Business auto expense		1,085.80	
Auto depreciation; on business car—9 mos. cost $1400.00—25%		262.50	
County and State taxes		695.66	
Attorney fees		490.00	
Interest paid		6,421.65	
Donations to M. E. Church-South		1,552.50	
Donations to Miscellaneous organizations		614.25	
Knight lease expense—dry		2,120.28	
Wilbern lease expense		530.53	
Continental Oil Co. stock loss		3,426.00	
Distributive share of loss from Rancho Vista Partnership		948.06	
Amortization New Mexico leases		45.20	
Cowling expense		559.15	
Salaries and labor		1,080.50	
X. Y. Z. loss		247.68	
Jarvis well expense		1,018.75	
Accounting		750.00	
Miscellaneous general expense and losses:			
Recording and revenue stamps	$49.00		
Abstracts	9.50		

New Mexico Rentals ...	33.47		
Mis. lease expense	176.69		
Mis. general expense ...	1097.50		
Mis. real estate expense	246.00		
Ford car loss	125.00		
German bonds loss	156.50		
Peckham-Okla. loss	87.50		
Burnett lease loss	675.02		
Palmer note loss	2000 00		
Crosby lease forfeit	190.63		
Harrell & Jones	860.99		
Seay lease note loss	40.00		
Seay lease note loss	25.00		
Seay lease note loss	21.62		
Business insurance	38.67		
Amortization Taylor lease	25.00		
Amortization Wheeler lease	14.22		
Repairs rent bldg.	72.85	5,945.17	31,715.34
Net Community Gain—1926			$25,927.62

2108 Memo—1926.

J. T. Harrell.

For further reference to the work sheets and data used in the preparation of 1926 returns have been assigned letters, as designated herein. Most of the detail was supplied by Mrs. Ward in the bound sheets labeled "A".

For convenience in checking the items appearing in tax return are amplified as follows:

Cowling sale profit, $6,944.24:

An analysis has been made of all sales as appearing on the annual statements from L. E. Cowling & Co. furnished Mr. Harrell under his Joint Venture with Mr. Cowling, and as in practically every instance it has been necessary for Mr. Cowling and Mr. Harrell to take

back second lien notes on the properties sold, covering installments agreed upon, with small initial payments received at the time of sale; the sales have been worked out on the installment basis, and profit reported is based thereon.

Work-sheet "B" shows cost of property, sale price, prior liens, vendee's obligation, percentage of profit to contract price, amount received in each of the taxable years 1925 and 1926, and the profit on each transaction in those years. This will also result in reducing the profit in 1925, which can be adjusted when the return is checked.

Cowling interest received, $1167.57:

This amount represents the amount of interest credited on the notes held by Mr. Harrell personally arising out of Cowling transactions, and the items of interest composing it are shown on work-sheet "B" opposite notes marked "H" as identifying those belonging to Mr. Harrell. Some of the notes are still held by the Company, and some notes belonging to Mr. Cowling are held by the City National Bank as collateral to Mr. Cowling's indebtedness to it.

Dividends received, $4599.34:

Dividends received, and their source, are set out in "A".

Salary and Bonus received, $7875.00:

Salary consists of a monthly salary of $625.00 for 12 months from the City National Bank, and a bonus of five percent of the annual salary; or $7500.00 plus $375.00.

Interest received, $4636.71:

Interest received, and from whom received, is set out in detail in "A". This amount of interest does not include any Cowling items.

Sale of Royalty, $7500.00:

The amount shown was received by Mr. Harrell as his interest in an over-riding royalty on production in Willbarger County. This royalty was sold to Barkley & Meadows by Mr. Harrell and Mr. Basham, and as all costs have been previously claimed the entire amount is returned as profit. Art. 216 (e) Reg. 69 should be kept in mind pending definite determination by the Board of Tax Appeals as to its proper application.

Payments in oil—Verschoyle, $1305.09:

These payments in oil only were received on account of sale made in 1923, and the entire amount now received is to be returned as income.

Moore County Lease sales, $3565.00:

On June 3, 1926, Mr. Harrell purchased for $2500.00 an interest in leases aggregating 1600 acres on the W. H. Taylor ranch in Moore County. During 1926 1440 acres, or 90% of the acreage was sold, leaving 160 acres retained. As his share of acreage sales, Mr. Harrell received the following amounts:

Aug. 16, 1926	$1440.00
Dec. 3, 1926	4375.00
	$3815.00
Less Cost: 90% of $2500.00	2250.00
Net gain on sales	$3565.00

Texhoma Oil & Refining Co. Stock sale, $7448.83:

Profit on sale of this stock was determined as follows:

Sales Price:	
Feb. 5, 1926 "A"	$ 9,060.00
Aug. 2, 1926 "A"	9,060.00
	$18,120.00

Less Cost:		
Checks given for Texhoma stock,		
1923: (March)	$26,550.69	
	4,916.65	
	$31,467.34	
Less E. H. Eddleman ½	15,733.67	
	15,733.67	
Less Cost taken on 1923 sale ...	5,062.50	10,671.17
		$7,448.83

Marlow and O'Neil tracts profit, $10,052.80:

These two tracts of acreage adjoining the City were sold by Mr. Harrell to Mr. Carruthers, taking his notes on which Mr. Carruthers made various payments through the year aggregating $17,252.80.

Owing to the fact *the* the properties had prior lien encumbrance, the notes not having a fair market value equal to the amount of them, and practically all payments except a small amount being received by Mr. Harrell in 1926, the cost to Mr. Harrell of $5000.00 on one tract and $2200.00 on the other, being the amount of cash put in by him, has been used in 1926 against the total receipts from Carruthers of $17,252.80, as shown in "C". Any remaining balance due from Carruthers will be taken up in 1927 as income when paid. It is believed that this method will approximate the same profit as would be determined by using the basis of the fair market value of the Carruthers paper.

Vernon oil runs, $1,110.75:

These oil runs include a few minor gas sales that may be other than Vernon sales, but the amount of them is small; and inasmuch as there was no operating expense to limit depletion, their inclusion here would not affect the tax basis. "C".

Green oil runs, $215.21. "C":

No depletion claimed. See expense on Wilbern lease "A".

McCarty oil runs, $1,530.10:

Oil runs received by Mr. Harrell aggregate $4235.83 under his interest. In addition there was paid to him the runs due Mrs. Lansing et al on McCarty and Dodson leases, out of which Mr. Harrell returned to Mrs. Laning $1000.00 per month in 1926 for her use in operating the leases and the balance of the amounts received by Harrell under Mrs. Laning's interest was applied by him on her indebtedness to him. Mr. Harrell's share of operating expense for his own interest is set out under "Lease—McCarty" ("A") as $594.59, plus the amount paid by him to Mrs. R. A. Laning in excess of $1000.00 per month, as shown in her account. This excess amounted to $1165.89, and with the $594.59 referred to above accounts for the total of $1760.48 operating expense, which amount should be used in lieu of $1165.89 operating expense McCarty lease shown in return, with a resultant decrease in income of $365.26. (Full additional $594.59 cannot be gained account 50% depletion limitation.)

Deductions.

Seay Lease loss, $1,965.77:

The loss taken is the depreciated cost of equipment. The equipment costs are shown in work-sheets for 1924, and depreciation sustained is shown in 1924 return, and in 1925 return:

Cost of equipment, 1924		$3,145.25
Deprn. 1924	$393.16	
Deprn. 1925	786.32	1,179.48
Loss—Depreciated cost		$1,965.77

(No cost for lease—hence no depletion sustained on cost.)

Marlborough loss, $1,455.89:

The Marlborough loss is shown in detail in work-sheets "D", including profit on the sale of approximately 40 lots on the installment basis. Details were secured from the office of Mr. G. W. Peckham who is in charge of the property and sales of lots and costs thereof were worked out in full detail to arrive at the correct profit on installment sales. Included in the operating expense is depreciation taken, which has been claimed subject to adjustment.

Burlington forfeit, $500.00:

Mr. Harreli paid $500.00 for an option on property in Burlington, Iowa, which option was not exercised, and the amount paid, $500,00, was forfeited and resulted in a loss of that amount to Mr. Harrell.

Business auto expense, $1085.80:

The total automobile expense of Mr. Harrell, as shown under that heading in "A" for 1926 was $3752.15. Included in this amount was $2150.00 as part of the purchase price of two automobiles from Munger Auto Co. The balance of the auto expense has been allocated on the basis of 2/3, $1068.10, to business expense and 1/3, $534.05, to personal expense. This is believed to truly reflect the actual proportion of expense on this account. In addition to the $1602.15, there is included a license of $17.70 in Paul's account.

Auto depreciation, $262.50:

Depreciation is claimed for nine months at 25% on a business car owned by Mr. Harrell purchased at a cost of $1400 from Munger Auto Company. In addition to this business car Mr. Harrell has a pleasure car, and therefore full depreciation has been claimed on business car.

County and State taxes, $695.66:

Only County and State taxes for which checks were paid by the bank during the year 1926 are included in this

amount, and checks given in 1926, (Dec.) which were paid by the bank in Jan., 1927, will be claimed as 1927 deductions. This is in conformity with prior practice of adhering strictly to actual cash receipts and disbursements during the year reflected in the bank account. "A".

Attorney fees, $490.00:
This item appears in detail in "A".

Interest paid, $6,421.65:
The amount of interest paid shown under "Bills Payable" in "A" of $6411.48 has been increased by $10.17 as the amount of interest paid on income tax installments, shown under the heading "taxes"—"A". This amount of interest paid does not include the amount of interest on Marlborough tract included in the check for $4797.87 to Highland Irrigation Co. shown under "Real Estate." This item of interest appears in "Interest paid" in the Marlborough statement ("D").

Donations, $2166.75:
Donations are set out in detail under that heading in "Donations" "A" and aggregate $2211.75, from which the following items have been deducted as unallowable for tax purposes:

Mrs. Cain fund	$10.00	
Hutchins-Bird man	10.00	
Anti-Saloon League	15.00	
Berachah home Entertainment (x)	10.00	$45.00

(x) Donations to Berachah Home are allowable deductions ordinarily, but being for an entertainment might make it subject to objection, and therefore it has not been claimed.

Knight lease expense—dry, $2,120.28:
The items making up this amount are shown under "Lease—Eagle Creek—W. T. Knight" ("A"). Item of

$320.84 has been excluded as being a payment on note given for purchase of Porter Fee, and the interest item of $220.98 is included in interest paid under—"Bills Payable." It is also a Porter fee item, but allowable as a deduction.

Wilbern Lease expense, $530.53:

This item shown in detail under "Lease-Wilbern" (A).

Continental Oil Company stock loss, $3,426.00:

On Feb. 2nd Mr. Harrell gave check for $5,000.00 to R. O. Harvey for the purchase of Continental Oil Company stock and on the sale of the stock received $1324.00 in March and $250.00 in April; the difference of $3426.00 being a loss.

Rancho Vista loss, $948.06:

Distributive shares per Partnership report.

Amortization of New Mexico leases, $45.20:

Cost of New Mexico leases, $226.00 (See 1924 worksheets) Purchased with G. W. Peckham. For lack of complete information as to dates, a five-year term has been assumed and one-fifth of the cost, $226.00, claimed as an amortization deduction for 1926.

Cowling expense, $559.15:

This amount represents one-half of the excess of expense over miscellaneous income shown in Cowling statement for the year 1926. (Profit from sales is reflected herein through "Cowling sale profit.")

Salaries and labor, $1,080.50:

This amount represents the labor expense or maintenance cost on suburban acres (15 A) acquired by Mr. Harrell in North Morningside. The other acreage interests of Mr. Harrell are reflected in "Marlborough loss" and "Ranch Vista" Partnership.

X. Y. Z. loss, $247.68:

This loss is shown in detail in statement furnished Mr. Harrell by Maer-Staniforth, and incorporated in 1926 work-papers. The loss is largely through lapsed leases.

Jarvis well expense, $1,018.75:

This item represents Mr. Harrell's share of expense of drilling a dry hole, and the amount is set out in detail in "Lease-Panhandle" (A).

Accounting, $750.00:

Payment to A. F. Bowden on Dec. 3, 1926, as shown in "Miscellaneous-December" (A).

Miscellaneous general expense and losses, $5,945.17:

This total of $5,945.17 is composed of the following items:

Recording and Revenue (A)	$49.01
Abstracts (A)	9.50
New Mexico rentals (Lease N. M. "A")	33.47
Miscellaneous lease expense—Note 1	176.69
Miscellaneous general expense—Note 2	1097.50
Miscellaneous real estate expense—Note 3	246.00
Ford car loss—Note 4	125.00
German bonds expense—Note 5	156.50
Peckham Oklahoma loss—Note 6	87.50
Burnett lease loss—Note 7	675.02
Palmer note loss—Note 8	2000.00
Crosby lease forfeit—Note 9	190.63
Harrell & Jones—Note 10	860.99
Seay lease note loss—Note 11	40.00
Seay lease note loss—Note 11	25.00
Seay lease note loss—Note 11	21.62
Business insurance—Note 12	38.67
Amortization Taylor lease—Note 13	25.00
Amortization Wheeler lease—Note 14	14.22
Repairs—Note 15	72.85
	$5945.17

Note: 1 to 15 noted above appear on the following page, in explanation.

Note 1, $176.69:

Lease—McClatchey (A)	$80.00	
Lease—McClatchey (A)	75.00	
Leases—Miscellaneous (A)	8.34	
Lease—Joe Ostean (A)	13.35	$176.69

Note 2, $1097.50:

See "Miscellaneous-December" (A) for re-cap. of items composing this amount, and which have been checked and carried to inside column on the "Miscellaneous" pages from January to December inclusive. The principal item is $250.00 Chamber of Commerce dues, with other minor business expenses in smaller amounts.

Note 3, $246.00:

These deductions are shown in detail under "Real Estate" "A" as expense items in connection with real estate owned.

Note 4, $125.00:

In 1924 Mr. Harrell purchased a Ford car for $200.00, (refer to 1924 work-sheets). The car has been worn out and loss is now claimed as follows:

Cost		$200.00	
Less:			
Deprn. 1924 25% for 6 mos.	$25.00		
Deprn. 1925 25%—1 yr.	50.00	75.00	$125.00

In re-checking 1924 and 1925 this depreciation shown should be taken as additional deductions. The loss probably should be 1925 instead of 1926, in which case the depreciated cost, and loss, would be $175.00.

Note 5, $156.50:

Cost of German bonds, as shown in work-sheets for 1924. Loss may be in 1924 or 1925, but is now claimed for 1926; and should be allowed in one of the three years.

Note 6, $87.50:

In June, 1926, Mr. Harrell took an interest with W. H. Peckham in a drilling proposition in Oklahoma, for which Mr. Harrell paid $1600 as shown in "Leases-Oklahoma" (A). Various sales were made and the transaction closed with the receipt by Mr. Harrell of the following amounts:

July 30	$681.25	
Sept. 30	481.25	
Oct. 1	200.00	
Dec. 4	150.00	$1512.50

Credits appear as deposits in "A", and shown under lease sales in work-sheet "C".

Note 7, $675.02:

The Burnett Lease—Silk, Bullington & Clark—oil runs are detailed in work-sheet "C" under "Panhandle oil runs —Amarillo district" and total $2,761.12. Distributive share of operating expense for Mr. Harrell, including depreciation, is shown to be $3,436.14 in statement from office of W. W. Silk accompanying work-sheets ("E"). Operating expense exceeds income and depletion at 27½% is not allowable. Data for depletion on cost is not available, but would be small deduction.

Note 8, $2000.00:

Note of A. W. Palmer for $2000.00 dated in 1925 and due in six months is a loss on account of maker having become entirely insolvent and collection impossible.

Note 9, $190.63:

This represents tax-payer's interest in amount of forfeit on account of Crosby lease, and shown in detail under "Lease-Panhandle." (A).

Note 10, $860.99:

Mr. Harrell sustained one-half of loss and expense of $1721.99 shown in the Harrell & Jones statement "F" with work-sheets. Sales from property owned under this Joint Venture will likely be upon installment basis, and be reflected in 1927 returns.

Note 11, $40.00; # $25.00; # $21.62:

Certain small notes were outstanding for the Seay Lease and were paid by Mr. Harrell, and are a loss to him. These notes appear in "Bills Payable" (A), and are in addition to loss on Seay Equipment shown elsewhere.

Note 12, $38.67:

Business insurance on residence (rental property) at 1607-14th St. See "Insurance-Property" (A). This property was acquired in exchange for other real estate, and traded; and gain or loss will be shown for tax purposes when finally determined.

Note 13, $25.00:

Amortization of Taylor Lease "Lease-Panhandle-Moore County" (A). (See Moore County Lease Profit above.)

Mr. Harrell's cost of the interest in acreage retained (160 acres out of 1600) was $250.00, or 1/10th of his investment of $2500.00. Without definite data, a 5 year lease is assumed, and remaining cost amortized for six months.

Note 14, $14.22:

Amortization of Wheeler County Lease "Lease-Wheeler County" (A). Mr. Harrell's cost was $142.22 and same

basis as on Taylor lease was used for amortization; 5 year term—half year in 1926.

Note 15, $72.85:

Repairs of $72.85 are on rental property at 1607 14th St., and are to be found in "Real Estate" (A).

Comment.

Certain payments received from G. W. Peckham, and detailed in work-sheet "C" are in connection with the sale of Vernon Lease for which notes were taken. These payments are properly 1925 income, with the exception of interest on them received in 1926, and should be included in 1925 in re-checking or in the filing of an amended return. The notes were not dependent on the oil being produced, but were made without restriction, and should have been included in 1925 income to the amount of their fair market value.

As heretofore noted, the Cowling sales profits for 1925 and 1926 computed as shown will reduce the Cowling profit in 1925 to the amount shown in work-sheet "B"—(1926)

Seay lease loss is properly taken in 1926, but the cost of Morgan lease in sale in 1925 should be increased by the depleted cost of Lanier lease, which was included in the transaction.

In Deposits for August 1926 will appear one for $1475.00 from J. A. Kemp for 10 shares of bank stock. This stock was sold to Mr. Kemp at cost, and was a part of the stock purchased by Mr. Harrell on August 2nd—23 shares for $3392.50, as shown in "Stocks and Bonds" (A). A similar transaction appears in November, Mr. Kemp paying $2030.00 for 14 shares of stock, or one-half of the stock purchased by Mr. Harrell from Mr. G. W. Peckham. There is a slight variation of $70.00 between this amount and $1960.00, one-half of the purchase price of $3920.00 from Peckham; but as the intention was to assign the stock at cost, it is assumed that the $70.00 was some outside item and has not been taken up as income.

On Nov. 10th Mr. Harrell purchased a royalty interest from G. W. Peckham for $1000.00 as shown in "Lease-Wheeler County" (A) and on Nov. 12th sold a half interest to C. E. Basham at cost, received $500.00 which appears as deposit of Nov. 12th.

It is believed that a complete and thorough search of files and records would disclose that Mr. Harrell is entitled to more deductions for lapsed leases in the period 1924-1925- and 1926 than he has claimed.

RHK.

2111 Mr. Rogers:

In the absence of an agreement, I would like to offer in evidence the pleadings filed by the bank, after the remanding of the case by the Supreme Court, to show you discontinued as an indorsement on the thirteen thousand dollars, and that there was no suit pending upon that until in December, 1936.

Mr. Humphrey:

I will agree to that.

Mr. Rogers:

Now, if Your Honor please, it may be of some importance as to the law of the case, and the respective contentions about it for the record to show affirmatively what the status of this case was in so far as the pleadings are concerned, upon which the bank and Mr. Harrell went to trial in the State Court. I would assume, although I do not know that the Court will take judicial knowledge of it, but I want to tender and offer in evidence the first amended original petition of the City National Bank against the Wichita Royalty Company in cause No. 24.-549-B, in the 78th District Court of Wichita County, Texas, filed December 31, 1930, and marked "Defendant's Exhibit E" as follows:

DEFENDANT'S EXHIBIT E.

In the District Court of Wichita County, Texas, for the 78th Judicial District, December Term A. D. 1930.

City National Bank of Wichita Falls, Texas,
vs. No. 24549-B.
Wichita Royalty Company, et al.

To the Honorable W. W. Cook, Judge of said Court:

Comes the City National Bank of Wichita Falls,
2112 Texas, plaintiff in the above entitled and numbered cause and with leave of the Court first had and obtained, files this its First Amended Original Petition in lieu of and as a complete substitute for its Original Petition heretofore filed, and for such amended petition pleads as follows:

I.

The City National Bank of Wichita Falls, Texas, a corporation, organized and existing under the laws of the United States as a national banking association, with its office and place of business in Wichita County, Texas, hereinafter styled plaintiff, complaining of the Wichita Royalty Company, a common law trust, whose sole trustee is E. E. Scannell, who resides in Wichita County, Texas, and complaining of E. E. Scannell, individually and as trustee also, a resident of Wichita County, Texas, hereinafter styled defendants, presents to the Court as follows:

II.

That the Wichita Royalty Company is a common law trust estate, operating under a Declaration of Trust, recorded in the Deed Records of Wichita County, Texas, Volume 168, pages 56 and 58, and that E. E. Scannell is its sole trustee, duly appointed and qualified as such, and

is a resident citizen of Wichita County, Texas, and has sole authority and power to manage, control and liquidate said trust.

2113 III.

That trust has been engaged in the general business of buying and selling lands, oil properties, mineral rights and royalties, as evidenced by the powers set forth in the Declaration of Trust, aforesaid, and that said Declaration of Trust specifically provides, among other things, that the assets and properties are charged with all of the debts and obligations of said trust estate.

That said trust has been generally engaged in the purchase of royalties, stocks and bonds, real estate and is now the owner of certain oil lands and interests and royalties, a full complete, detailed and itemized list thereof being hereto attached, marked Exhibit "A" and made a part of this petition, and here referred to for all purposes.

That in addition to said properties, the said defendant is the owner of one-half of the capital stock of the Texas Investment Company amounting to 325 shares, which is a corporation duly incorporated under the laws of the State of Texas.

IV.

That on the 26th day of June, 1930, the defendant, E. E. Scannell, as sole trustee for the Wichita Royalty Company, and for a valuable consideration made, executed and delivered to the plaintiff a certain promissory note in the principal sum of $22,000.00, due sixty days after date and payable to the order of the plaintiff with interest from date until paid at the rate of 8% per annum, which note further provides for 10% attorney's fees
2114 if sued upon or placed in the hands of an attorney for collection, which note is a renewal

and extension of an indebtedness owing by defendants to the plaintiff herein for money borrowed by said defendants in the due and regular course of business, and is a renewal and extension of the notes for which the deeds of trust hereinafter set forth are given as security.

V.

That to secure the payment of said note, and all renewals and extensions thereof, the defendants made, executed and delivered to J. T. Harrell, Trustee a Deed of Trust, dated July 24, A. D. 1925, upon the following described lands and premises, to-wit:

Full over-riding royalty covering 40 acres, Lot No. 4, of the South 100 acres, Sarah Tankersley Survey, Abstract No. 278, recorded in Vol. 84, pages 254-6 Deed Records of Young County, Texas;

9/32 of 1/8 fee royalty in 160 acres, known as R. D. Owen Survey, Abst. 2245, and being known as BRIR Survey, No. 38, and the same having been patented to R. D. Owen, October 20, 1919, and said patent duly recorded in Volume 80, page 249, of Deed Records of Young County, Texas;

1/8 of the 1/8 fee royalty in 80 acres known as the south half of the J. A. Harkness Survey, Abstract 1442, and patented to Albert Owen, Patent No. .... and which is recorded in Volume 2, page 537 of the Deed Records of Young County, Texas;

2115 1/8 of the 1/8 fee royalty in south 80 acres, G. L. Aynesworth Survey BRIR No. 49, Abst. 1948, patented to J. A. Driver, Assignee, dated Aug. 13, 1913, Patent No. 3, Volume 47, Young County, Texas;

1/16 of 1/8 fee royalty in 50 acre tract, known as a part of the Pedro-Varela XI League Grant, recorded in deed

Records of Limestone County, Volume 140, page 617, known as Ellis Tract, Mexia, Texas.

Which deed of trust was duly filed for record in the Counties where said lands were situated, and is a valid lien upon said lands and premises above described.

VI.

The plaintiff further alleges that on the 9th of June, 1930, The Texas Investment Company, a corporation, by and thru E. E. Scannell, its president, and J. Will Gray, its treasurer, made, executed and delivered to plaintiff its promissory note in the sum of $43,000.00, due on demand, bearing interest from date until paid at the rate of 8%, providing for attorneys' fees if sued upon or placed in the hands of attorneys for collection, or collected thru the Probate Court. That as collateral to secure said note there was pledged under writter. pledge with said bank 650 shares of the stock of the Texas Investment Company, a corporation, and notes and accounts receivable of the aggregate amount of $35,000.00, which note was indorsed by the Wichita Royalty Company
2116 by E. E. Scannell, Trustee, by J. T. Harrell and J. A. Kemp.

VII.

That the assets pledged to secure said note have been sold in accordance with the terms of said note and that said note is entitled to the following credits for monies paid and for the sale of said assets; 8-20-30. $700.00; 9-17-30, $300.00; 10-2-30, $300.00; 12-29-30, credit for collateral sold $20,000.00, leaving a balance due on said note in the sum of $29,192.00, including interest and attorneys' fees, said note having been placed in the hands of attorneys for collection prior to December 29, 1930. That the relative liability of indorsers on said note for such deficiency was

one-half to Wichita Royalty Company and one-half to J. T. Harrell and J. A. Kemp jointly; that the Texas Investment Company's entire assets were pledged and said note cannot be collected from the principal, the plaintiff having already exhausted the assets of the principal. Therefore, the defendants, Wichita Royalty Company and E. E. Scannell, are now indebted to the plaintiff in the sum of Fourteen Thousand Five Hundred Ninety-Six & no/100 Dollars ($14,596.00), being one-half of said deficiency.

VIII.

That said notes are past due and unpaid and the defendants, though often requested, have failed to pay the same or any part thereof, and the plaintiff has placed said notes in the hands of its attorneys and has agreed to pay said attorney's 10% of the principal and interest, which is the usual and customary charge and is reasonable.

2117

IX.

That under the terms of the Declaration of Trust, the creditors of the Wichita Royalty Company, including this creditor have an equitable lien upon all the property and assets of said estate and this plaintiff has a valid and subsisting lien upon the properties described in the mortgages and deed of trust herein above set out and also all of the other property and assets of the defendant, Wichita Royalty Company.

X.

That said defendants, the Wichita Royalty Company and E. E. Scannell, sole trustee, do not have sufficient assets to pay said indebtedness in the ordinary course of business, and cannot realize or will within a reasonable length of time realize sufficient assets with which to pay its obligations, and is in an insolvent condition.

XI.

That its properties are producing oil properties, and are being depleted, that is to say, that oil is being produced therefrom and said properties are being depleted, and said properties and assets, as well as the Wichita Royalty Company should be placed in the hands of a receiver to take charge of, conserve the same, and liquidate the indebtedness pending this litigation; that said
2118 receiver is necessary for the reason that said Wichita Royalty Company is insolvent, or is at least threatened with insolvency, and that the said defendant has no ready assets with which to pay its obligations. That E. E. Scannell has been in charge of the books and records of said Royalty Company since its creation, and is a shareholder and trustee and is liable personally along with the Wichita Royalty Company for this indebtedness, and is refusing to apply the proceeds of the oil produced from said properties to the liquidation of this indebtedness.

Wherefore, Premises Considered, citation having been served on the defendants, the plaintiff prays for the appointment of a Receiver to take charge of, administer, conserve the assets and collect the proceeds thereof, pending this litigation for a judgment against the defendants for the amount of the plaintiff's debt, interest, attorney's fees and costs of suit, for the fixing and establishment of a lien upon all of the assets of said defendant, for the satisfaction of this judgment, and for a sale of said properties under the order of this Court, and an application of the proceeds thereof to the payment and satisfaction of the indebtedness herein sued for, and such other indebtedness as may be owing by said defendant. Plaintiff further prays for costs of suit, and for general relief.

BULLINGTON, HUMPHREY & KING,
Attorneys for Plaintiff.

2119 Mr. Rogers:

Also the answer of the same bank to the cross action filed against it on February 14, 1931, by the City National Bank, which was filed April 18, 1931, Defendant's Exhibit F.

(Marked "Defendant's Exhibit F" as follows:)

DEFENDANT'S EXHIBIT F.

In the 78th District Court of Wichita County, Texas.

The City National Bank of Wichita Falls, Texas.
vs. No. 24549-B.
Wichita Royalty Company, et al.

Subject to the pleas in abatement heretofore filed and only in the event such pleadings be overruled, comes now the plaintiff, the City National Bank of Wichita Falls, Texas, and answers the cross action of the defendant, Wichita Royalty Company, as follows:

I.

This plaintiff excepts to said answer and cross action and says that the same is insufficient to entitle said defendant to any recovery herein against this plaintiff, and of this it prays judgment of the Court.

II.

This plaintiff excepts to Paragraph Five of said cross action wherein it alleges that J. T. Harrell was a partner and associate of G. W. Peckham, for the reason
2120 that any knowledge acquired by J. T. Harrell by reason of his being a partner with G. W. Peckham would not be imputable to the plaintiff bank, and of this it prays judgment of the Court.

III.

This plaintiff further specially excepts to that portion of Paragraph Five of the defendant, Wichita Royalty Company's pleadings where it alleges that J. T. Harrell and others whose names it is not material to allege were from time to time jointly interested in the purchase for mutual profit of interest in the oil and gas properties and the sale thereof, constituting inter se se a partnership, etc., because of a partnership inter se se this plaintiff is not apprised of who constituted this partnership, as the names of the parties are not alleged other than J. T. Harrell.

IIIa.

The plaintiff, City National Bank, further excepts to the cross action of the defendant, Wichita Royalty Company, in this, to-wit: Said cross action shows that the Wichita Royalty Company is a joint stock association operating under a declaration of trust and E. E. Scannell is its trustee, and said cross action joins said trustee with some Thirteen Hundred (1300) stockholders, and that stockholders are not necessary or proper parties to said cross action.

That said cross action shows that it is a suit by the trustee, and that said trustee has full power and authority to prosecute any cause of action; that the stock-
2121 holders are not necessary or proper parties and are in fact without capacity to sue upon this claim, in that it is no where shown that the trustee is unwilling to file such a suit, or in any way incapacitated to file the same.

Wherefore, this plaintiff prays judgment of the Court as to the sufficiency of said petition in said respect.

Therefore, the plaintiff excepts to said pleadings because of the failure to name the other parties constituting said partnership, and of this it prays judgment of the Court.

IV.

This plaintiff excepts to said petition wherein it alleges that "E. E. Scannell, Trustee, one of some 1300 stockholders of this company herein, called cross complainants", for the reason that said petition does not name the other 1300 stockholders or the respective residences and citizenship, and the plaintiff would be entitled to know the personnel of said complainant defendants and their respective residences, in that the plaintiff would be entitled under the articles of association to judgment against said shareholders individually. Wherefore, this plaintiff prays judgment of the Court as to the sufficiency of said exception and to require the said defendant to set out the respective names and residences of the shareholders.

V.

This plaintiff excepts to all of the allegations in said answer wherein it alleges that said J. T. Harrell
2122 was an associate and partner of G. W. Peckham, for the reason that in the event of any adverse interest or association of the partnership relation existing between J. T. Harrell and G. W. Peckham, the plaintiff would not be bound or obligated by the statements of said officer, and of this it prays judgment of the Court.

VI.

This plaintiff further specially excepts to that portion of Paragraph Six of the Wichita Royalty Company's answer, wherein they allege that the said J. T. Harrell knew, "as did all other officers and/or agents of plaintiff bank having anything to do with the transactions

hereinafter set forth", because said allegation does not name the other officers of said City National Bank, and does not apprise it of what officer or officers the said defendant, Wichita Royalty Company, is directing its answer to, and of this it prays judgment of the Court.

VII.

Further excepting to said amended answer and cross action, this plaintiff says that the same shows upon its face an improper joinder of parties defendant, to-wit: a joinder of J. T. Harrell with the City National Bank upon causes of action in no wise connected or related to each other, and of this exception it prays judgment of the Court.

And for answer herein, if same be necessary, without waiving its pleas in abatement or either of them, and without waiving its general demurrer and without waiving its special demurrers or any of them, and subject to the Court overruling each and both of the pleas in abatement and subject to the Court overruling this general demurrer and each and all of the special demurrers, comes now the plaintiff, the City National Bank, and denies each and every allegation set forth in the defendant, Wichita Royalty Company's second amended original answer, and of this it puts itself upon the country.

2123

And for special answer herein, without waiving any of the foregoing proceedings and subject only to a requirement for answer herein to the merits, this plaintiff, City National Bank, in special answer therein to the second original amended answer of the defendant, Wichita Royalty Company, says:

I.

That heretofore to-wit; about the 1st day of June, A. D. 1920, R. R. Robertson by a declaration of trust created what is known as the Wichita Royalty Company by

certain articles of association and agreement, duly subscribed and acknowledged by the said R. R. Robertson, and filed for record August 27, A. D. 1920, in the office of the County Clerk of Wichita County, Texas, in Volume I, page 56 of the Deed Records of Wichita County, Texas, to which reference is here made. By virtue of said articles of agreement and declaration of trust the complete and exclusive affairs of said company were vested in the trustee free of the control of the stockholders. That said declaration of trust, among other things, provided the following:

2124 "The entire affairs of this trust shall be managed by one trustee, who shall own at least one certificate of membership for not less than one share. The trustee may from time to time hire suitable officers for the transaction of the business of this trust; and he may appoint, remove or reappoint such officers, agents and other assistants as he may think best ....."

"The trustee shall have full and exclusive power and authority to conduct the business and affairs of this trust, to purchase, contract for, lease or otherwise acquire, any property necessary or proper for the purpose of the trust; to sell and convey all or any part of the property of the trust; to borrow money on the credit of the trust; and if he deems advisable, to execute notes therefor secured by a mortgage or deed of trust upon the property of the company, and generally to do all things which in his judgment is necessary and prudent in the management and conduct of the business of the company....."

2125 Said R. R. Robertson conducted the affairs of said association until he resigned on the 2nd day of January, A. D. 1923, which resignation was filed for record on January 8, A. D. 1923, and under the terms of said declaration of trust G. W. Peckham was appointed as trustee to succeed R. R. Robertson, said appointment being made by the District Court for the 30th Judicial

District of Texas in conformity with and pursuant to the articles of the association heretofore referred to. That after said G. W. Peckham had succeeded as trustee for the Wichita Royalty Company he was clothed and vested with the sole and exclusive management and control of said business, and conducted the business of said trust from his qualification and acceptance up until his death in the fall of 1929, and was the sole trustee, having full power and authority to conduct the affairs of said trust at all times complained of in the said defendant's cross complaint herein.

II.

That said G. W. Peckham had full and complete authority to draw checks upon the funds belonging to said association, and to make application of funds, and the plaintiff bank had no higher authority to appeal to in determining the proper application of the funds than G. W. Peckham, who was the sole trustee and in complete charge of the management of the affairs of said enterprise. That said G. W. Peckham's authority was free from the control of the shareholders of said association,
2126 as said shareholders had no legal right to the trust property or funds held or maintained by said trustee, and that said shareholders at all times knew of the appointment of G. W. Peckham as trustee and consented to his appointment and continuation by him of the management of said properties.

III.

That during all of the times herein complained of the said G. W. Peckham purchased properties for the defendant, Wichita Royalty Company, sometimes taking the title in his own name and sometimes in the name of the Wichita Royalty Company, sometimes carrying the funds in his own name and sometimes in the name of the Wichita Royalty Company, and transferring properties in his own name to the Wichita Royalty Company and funds in his own name to the account of the Wichita Royalty Com-

pany, and likewise transferring funds from the Wichita Royalty Company to funds in his own name; that such was his course of dealing and management of the affairs of said company, and it was known to the company and to its stockholders or by the use of ordinary diligence could have been known to said shareholders, as said records and books fully disclose these transactions, which records were at all times available and accessible to the shareholders, and by reason thereof all acts, conduct and transactions of the said G. W. Peckham as trustee were in fact and in truth known to the Wichita Royalty Company.

2127 IV.

That the said G. W. Peckham, as alleged in the plaintiff's first amended original petition, executed his promissory note to the plaintiff bank in the principal sum of Twenty-Two Thousand & No/100 ($22,000.00) Dollars, which represented funds borrowed by said Wichita Royalty Company and G. W. Peckham, trustee, from said plaintiff bank, which funds were subsequently expended by G. W. Peckham acting as sole trustee of said company; that said note had from time to time been renewed and extended by G. W. Peckham during his lifetime, and after his death E. E. Scannell, the defendant trustee herein, was duly appointed to succeed G. W. Peckham and accepted the said appointment and continued as trustee for the Wichita Royalty Company, and after his appointment the said E. E. Scannell from time to time paid the interest on said note and made payments thereon and renewed the same on many different occasions, executing renewals of said note with full and complete knowledge of all the transactions herein above complained of by the said defendant, Wichita Royalty Company, and received the benefits from said extensions and renewals; the said E. E. Scannell having been for many years an employee of the Wichita Royalty Company and being cognizant of all the facts plead herein by the defendant, Wichita Roy-

alty Company, at the date of said respective renewals, and is, therefore, now estopped to deny the validity of said note, or the alleged payment or conversion of funds by reason of the transactions herein plead by the defendant, Wichita Royalty Company.

2128 V.

That in the fall of 1925, G. W. Peckham and W. H. Peckham negotiated for the purchase of a tract of land adjacent to the City of Wichita Falls known as the Marlborough Addition, and induced the interpleaded defendant, J. T. Harrell, J. A. Kemp to join them in said purchase. That after the purchase of said property G. W. Peckham acquired the interest of W. H. Peckham, and thereafter sold and conveyed the interest he acquired from W. H. Peckham and the interest owned by him individually to the Wichita Royalty Company, which sale and transfer was made in the early part of 1926. The book and records of the Wichita Royalty Company, which were accessible to the stockholders and known to the present trustee, reflected said transactions. That thereafter one-half of the interest in the assets of the Marlborough Addition were carried upon the books of the Wichita Royalty Company as belonging to said company, and said company acting thru G. W. Peckham as sole trustee expended funds of said Wichita Royalty Company for the purchase and payment of its interest in said property and in the development and improvement thereof, each and all of which transactions were reflected by the books and records of said company and were accessible to and available to all of the shareholders of said company, and were well known to the present trustee who brings this cross action.

2129 VI.

That the said Marlborough Addition acting by and thru G. W. Peckham and the other co-partners borrowed from

the City National Bank the sum of approximately Forty Thousand & No/100 ($40,000.00) Dollars, evidenced by a note of the said Marlborough Addition, and indorsed and guaranteed by the said co-partners. That said G. W. Peckham, as well as W. H. Peckham, did not advise or inform the other remaining co-partners of their sale of their interest in said co-partnership properties to the Wichita Royalty Company, but permitted said properties to remain in the name of G. W. Peckham, who was holding the same as trustee for the Wichita Royalty Company and which fact was known only to the Wichita Royalty Company and its agents, but the expenditures of money for the improvement and development of said addition as well as the purchase price was fully reflected by the books and records of said company and was well known to the present trustee.

VII.

That shortly before the death of G. W. Peckham said co-partnership was incorporated under the name of the Texas Investment Company, that the corporation was perfected after the death of G. W. Peckham and after the present trustee was appointed. On the 24th of January, 1930, there was a stockholders' meeting, in which E. E. Scannell, trustee, was present and informed the other co-partners that the Wichita Royalty Company owned a one-half interest in said addition or partnership and
2130 was entitled to one-half of the capital stock thereof. Thereupon, on said date the capital stock was issued and one-half of the capital stock was delivered to and accepted by said trustee for the use and benefit of the Wichita Royalty Company. That the said E. E. Scannell was elected president of said corporation; that he signed the certificates of stock, called the meetings of the stockholders, a board of directors was elected, and the Wichita Royalty Company accepted the benefits of said enterprise and the benefits of the ownership of said stock, and the books and records of said Wichita Roy-

alty Company fully reflected all of said facts and they were known to the shareholders of said Wichita Royalty Company, or could have been known by the use of ordinary diligence.

VIII.

That when it was ascertained by the remaining shareholders and partners of the Marlborough Addition that G. W. Peckham had acquired for the Wichita Royalty Company a one-half interest in the properties of said co-partnership, and the said plaintiff bank permitted the administrator of the estate of G. W. Peckham to be relieved from his indorsement and guarantee upon the obligations of the Texas Investment Company, accepted in lieu thereof the indorsement and guarantee of the Wichita Royalty Company, and that the said Wichita Royalty Company by reason of its ownership of one-half of the capital stock and of the guarantee and indorsement of the
2131 obligations owing by said corporation to the plaintiff bank herein, thereafter made payments on said obligation, and the records and books of said Wichita Royalty Company show payments thereon, all of which payments were made with the full knowledge of the present trustee and imputed knowledge to the shareholders by virtue of the fact that the said trustee was the sole and exclusive manager of said properties and all rights incident thereto and not subject to the control of the shareholders.

IX.

This plaintiff further pleads herein as follows: That it is an old established banking institution, having operated a bank for some forty years, and has built up a large banking business over Northwest Texas, and was doing a large banking business during the times complained of by the Wichita Royalty Company. That at and during said period of time it had in excess of six thousand in-

dividual depositors, and had total gross deposits ranging from nine to eleven million dollars during said period of time; that it employed approximately fifty employees, agents and officers; that it was managed by a board of directors consisting of fifteen stockholders who managed the affairs of said bank, and whose officers were subject to their control; that J. T. Harrell was president of said bank, but he was only one of the five active officers in said institution; that because of his executive duties as president he was not charged with the duty of passing upon the various loans in said bank or all of them,
2132 and did not assume the duty of receiving deposits, the deposits being received generally by the tellers of said bank; that the loans in said bank were approved by a committee, and that J. T. Harrell had no authority as president of said bank to make loans except upon the advice and consent of said committee, and did not undertake to do so; that said committee changed from time to time and many times during the period covered by the various transactions alleged in the defendant's first amended original answer.

X.

That G. W. Peckham was a respected citizen of Wichita County, Texas, his integrity and reputation for honesty and fair dealings were good, he was so regarded by all, that he was actively engaged in business enterprises, that he carried an active bank account with the plaintiff bank, that he was also engaged individually in the purchase, sale and development of oil property, that he conducted the affairs of the Wichita Royalty Company as sole trustee, that during the period from 1925 until 1928 he deposited in the plaintiff bank in his own name, as well as in the name of the Wichita Royalty Company, large sums of money, that both accounts were active, that it was common practice for him to purchase royalty for the Wichita Royalty Company and pay for the same from the account

in his individual name, that he would transfer said property to the Wichita Royalty Company and draw checks upon said company for the purchase price ex-
2133 pended by him. That he would frequently make payments upon the obligations of the Wichita Royalty Company from funds carried in his own name. That plaintiff bank had no means of ascertaining the funds which belonged to him and which belonged to the Wichita Royalty Company, that such common practice of G. W. Peckham was well known to said Wichita Royalty Company, the books and records of said company reflected such dealings, and neither the President, J. T. Harrell, nor the other officers of said bank, or the tellers who were charged with receipts and payments of the deposits could by any kind of diligence ascertain that G. W. Peckham was intending to convert the monies of the Wichita Royalty Company by transferring funds in the name of that company to the account standing in his own name, that he was the Wichita Royalty Company, its sole trustee and had complete authority to make such transfers, and during this period of time, from the year 1925 until 1928 inclusive, G. W. Peckham handled many, many times, making divers and numerous deposits and divers and numerous withdrawals, aggregating many thousands of dollars, and it was impossible for said plaintiff bank, or its officers or directors to trace and ascertain the proper application of funds from the withdrawals he made from the account of the Wichita Royalty Company, and under the circumstances hereinabove related, they were charged with no such duty.

That the defendant, J. T. Harrell was never a partner with G. W. Peckham in any oil venture. He had acquired a small interest in a prospective oil tract of land
2134 in Archer County, Texas, in which G. W. Peckham was also a joint owner, carrying the same for the Wichita Royalty Company, but the same was wholly disconnected with any affairs of the bank and wholly disconnected with the ownership of G. W. Peckham in said tract of land.

That by reason of the foregoing facts, the plaintiff bank is not liable to the defendant, Wichita Royalty Company, for any conversion or misapplication of funds by G. W. Peckham, if in fact any such were made by him.

XI.

That the defendant, Wichita Royalty Company, as well as its stockholders and present trustee, were fully conversant and had knowledge, and knowledge was imputed to the stockholders of all of the facts hereinabove alleged, that the various stockholders had agreed and consented to the plan of management of said business enterprise, to-wit, the Wichita Royalty Company by G. W. Peckham, and had vested in him complete authority, free from their control, the books and records of said company were open to them for inspection, which disclosed all of the facts above set forth, that they were charged with knowledge of such transactions and having knowledge thereof, both thru their trustee and sole manager as selected by them, they accepted the benefits of each and all of the transactions, and by virtue thereof, they are now estopped to set up any cause of action against plaintiff bank by reason of any alleged conversion of funds belonging to the Wichita Royalty Company by G. W. Peckham.

2135 XII.

That said defendant, Wichita Royalty Company, and its shareholders were further charged with knowledge that G. W. Peckham had purchased one-half interest in the Marlborough Addition, that the books and records of said company disclosed said fact and disclosed expenditures made by G. W. Peckham therefor, and disclosed the ownership of said property and the subsequent owners of the corporate stock, and that said stock was accepted by the present trustee, and whatever benefits that were to be derived therefrom were accepted by the Wichita

Royalty Company and its shareholders, and they are, therefore, estopped now to complain that the expenditure of funds was ultra vires and unlawful, and are bound by the payment of the Wichita Royalty Company of obligations growing out of the ownership of one-half interest in Marlborough Addition, as well as all other transactions hereinabove detailed and as set out in defendant's Wichita Royalty Company, first amended original answer.

XIIa.

This plaintiff further says in reply to each and all of the allegations set out by the defendant, Wichita Royalty Company, in its second amended original answer, that it does not know of any misapplication or conversion of funds or sums of money or property that G. W. Peckham committed or perpetrated on the Wichita Royalty Company, defendant, and therefore, denies each and
2136 every allegation set up in the answer of said defendant and its cross action; but in the event and only in the event that said allegations set up in the second amended original answer and cross action be shown on the trial of this cause to be true as to any such conversion or misapplication of funds, then this plaintiff says that all of the transactions set up in said second amended original answer of the defendant, Wichita Royalty Company, on the part of G. W. Peckham, were fully reflected by the books and records kept in the office of the Wichita Royalty Company during the life of said G. W. Peckham. That all of the alleged checks and vouchers were kept in the office and all of the bank statements were kept in said office, and they were at all times open to the inspection of the Wichita Royalty Company and its stockholders; that all checks and bank statements showing the deposit and withdrawal of funds were returned to the office of the Wichita Royalty Company currently each month, and were posted by the bookkeeper of said Company upon the permanent records of said Company; that the bank

statements showing all of said transactions and the withdrawal of funds were returned to the office of the Wichita Royalty Company currently each month and there kept and remained without any concealment whatever, and without any attempt on the part of G. W. Peckham, or any employee of the Wichita Royalty Company to prevent beneficial owners or shareholders thereof from inspecting the same or having knowledge thereof, and all these transactions shown and alleged by the de-
2137 fendant, Wichita Royalty Company, occurred during the years 1925, 1926 and 1927, the last transaction and check being shown on February 19, 1927. During all of which time and for more than two years after said G. W. Peckham was alive and solvent, and that the said shareholders could have during said period of time ascertained and discovered by the use of the slightest diligence all of the facts which they now know; and had the same Wichita Royalty Company taken any action whatsoever pertaining to said transactions within the period of two years after the last transaction or any of the transactions, this plaintiff would have had at that time the opportunity to have had the testimony of G. W. Peckham and his account of said transactions, and had the right to have G. W. Peckham explain said transactions, if any there were, that were not rightfully charged to the account of the Wichita Royalty Company, said G. W. Peckham being then and there and at that time solvent, could have and would have responded to this plaintiff, and this plaintiff could have recouped from G. W. Peckham individually any sum or sums of money that had been wrongfully taken from the Wichita Royalty Company, or in any manner affecting the Wichita Royalty Company, yet this defendant, the Wichita Royalty Company, for more than two years took no action and delayed the same, with all the records and transactions open to it for inspection and open to the stockholders for inspection, and thereby deprived this plaintiff of the right to have the testimony of G. W. Peckham, who has since died and

died prior to the institution of this suit, in order
2138 to explain said transactions, and have deprived this plaintiff of any right or opportunity to recoup its losses, if any, by reason of said transactions; that said defendant, Wichita Royalty Company, and its stockholders delayed taking any action until after the death of G. W. Peckham in the fall of 1929, and have, therefore, deprived this plaintiff of the available right to have the testimony of G. W. Peckham, and to have said transactions examined and looked into when the minds of the parties handling said transactions were fresh concerning the subject matter thereof; and that if said action had been taken within a reasonable time or during the life of G. W. Peckham, this plaintiff could and would have had the benefit of his testimony and his explanation of all of said items, and in the event of any loss could have recouped the same against G. W. Peckham. Had the said Wichita Royalty Company prosecuted said alleged cross action within a reasonable length of time after the occurrence of said transactions, said discovery could have been made and this plaintiff could as aforesaid have recouped any losses during the life time of G. W. Peckham; that it was the duty of the said Wichita Royalty Company and its shareholders to ascertain from the books and records without waiting an undue length of time the condition of the handling of said affairs by G. W. Peckham, but said defendant waited until after the death of G. W. Peckham, in some instances more than four and a half or five years after the said alleged transactions, and are, therefore, estopped now to set up the same.

2139 Wherefore, this plaintiff pleads laches and equitable estoppel on the part of said Wichita Royalty Company and its shareholders from any kind or character of recovery herein against this plaintiff, and asks that the said plaintiff go hence without day by reason of said cross action, and recover of said defendant its costs.

XIII.

Further pleading herein and without admitting any of the allegations contained in the defendant's, Wichita Royalty Company, first amended original answer and cross action, but specifically denying the same, this plaintiff says that if any cause of action said defendant ever had against it, the same is now barred by the Statute of Limitation of two years, and expressly pleads said Statute in bar of defendant's right to recover herein, as any cause of action that defendant might have, arose more than two years prior to the filing of its petition and cross action herein, and all of said transactions were fully known and fully disclosed to it and its stockholders, and they were charged with notice thereof for more than two years prior to the filing of said petition and cross action, and this plaintiff here and now pleads the two year statute of Limitation as a bar of said defendant's right to recover herein.

Further pleading herein and without admitting any of the allegations contained in the defendant's, Wichita Royalty Company, first amended original answer and
2140 cross action, but specifically denying the same, this plaintiff says that if any cause of action said defendant ever had against it, the same is now barred by the Statute of Limitation of four years, and expressly pleads said Statute in bar of defendant's right to recover herein, as any cause of action that defendant might have, arose more than four years prior to the filing of its petition and cross action herein, and all of said transactions were fully known and fully disclosed to it and its stockholders, and they were charged with notice thereof for more than four years prior to the filing of said petition and cross action, and this plaintiff here and now pleads the four year statute of Limitation as a bar of said defendant's right to recover herein.

XIV.

By way of cross complaint and petition against the stockholders and shareholders of the Wichita Royalty Company, who are parties plaintiff in said cross action against this defendant, the plaintiff alleges that said shareholders are liable as co-partners upon the debt sued upon in the plaintiff's first amended original petition, and jointly and severally liable to the plaintiff upon the respective obligations set out and described in the said first amended original petition of the plaintiff, and that said shareholders, having voluntarily made themselves parties to this litigation, have failed to disclose their identity and residence, that is, their names and postoffice addresses; and this plaintiff does not know and does not have access to the books and records so as to as-
2141 certain the names and residences of said respective shareholders, but pleads against such shareholders all of the facts and allegations set forth in the plaintiff's first original petition herein, and prays that such cross complaining shareholders and E. E. Scannell, trustee, be required to disclose the respective names and residences of said shareholders, who have made themselves parties plaintiff in the cross action against this plaintiff, and that this plaintiff have judgment against said shareholders jointly and severally for its debt, cost of suit and for general relief.

XV.

Further pleading herein and for cross action against the co-defendant, J. T. Harrell, a resident of Wichita County, and interpleading herein W. H. Peckham, a resident and citizen of Wichita County, Texas, and W. H. Peckham, administrator of the estate of G. W. Peckham, deceased, Charles I. Francis and Mrs. Flora A. Kemp, independent executors under the last will and testament of J. A. Kemp, deceased, this plaintiff repleads all of the

facts hereinabove alleged in this answer, and in addition thereto, respectfully alleges that if the cause of action set up in the defendant, Wichita Royalty Company's first amended original answer be true, which the plaintiff specially denies, but in the event it be mistaken therein, then it says that in so far as the allegations are concerned in defendant's, Wichita Royalty Company's first amended original answer and cross action pertaining to
2142 the transaction of the Marlborough Addition and expenditure of funds for its purchase and improvements which amounted to the approximate sum of, as alleged in the Wichita Royalty Company's answer herein $75,000.00, that said alleged expenditures were made for and on behalf of the co-partnership known as the Marlborough Addition, and said co-partnership, to-wit: J. T. Harrell, J. A. Kemp, G. W. Peckham, and W. H. Peckham were the recipients of the benefits therefrom, and in the event of a recovery by the defendant Wichita Royalty Company, against this plaintiff, this plaintiff is entitled to judgment over and against the said W. H. Peckham, J. T. Harrell, W. H. Peckham, administrator of the estate of G. W. Peckham, deceased, and Flora A. Kemp and Charles I. Francis, independent executors under the last will and testament of J. A. Kemp, deceased, for whatever sum the said defendant, Wichita Royalty Company, may recover by virtue of the transactions relating to the Marlborough Addition against this plaintiff, and here and now requests that said above named parties be made parties defendant to this suit, and that citation be issued against them in terms of law, and for general relief.

XVI.

Further pleading here, and by way of interpleader against the Security National Bank of Wichita Falls, Texas, a national banking institution, this plaintiff says that if there is any liability, which it does not admit, but specifically denies, growing out of check No. 479, drawn

by G. W. Peckham on the plaintiff bank and pay-
2143 able to the order of the Security National Bank of Wichita Falls, Texas, that said Security National Bank received said deposit and that said check was paid to the Security National Bank, and said Security National Bank deposited said sum to the credit of G. W. Peckham, and if any recovery is made or had herein against this plaintiff by reason of said transaction, it is entitled to judgment over against the said Security National Bank for the amount thereof, as said check was paid to the Security National Bank at Wichita Falls, Texas, by this plaintiff in due course of banking business and that the Security National Bank of Wichita Falls, Texas, is a corporation doing business in Wichita Falls, Texas, having its agent and representative upon whom service may be had, J. C. Mytinger, who resides in Wichita County, Texas, and plaintiff here and now prays that citation issue in terms of law in pleading and citing the Security National Bank of Wichita Falls, Texas, to show cause why this plaintiff should not recover of and from it, the Security National Bank, whatever sum or sums that the defendant, Wichita Royalty Company, may recover against it in its cross action, in so far as the item of $6,000.00 set forth in the Wichita Royalty Company's first amended original answer under Paragraph 16 thereof.

XVII.

Plaintiff further alleges that upon the death of G. W. Peckham, E. E. Scannell was appointed to succeed him and accepted said appointment and continued as trustee for the Wichita Royalty Company with full pow-
2144 er and authority to manage and carry on the business of the said Wichita Royalty Company, and to act for the Wichita Royalty Company without accountability to any of the stockholders thereof. That after said appointment as trustee said E. E. Scannell renewed the notes sued on herein, paid interest on said notes and made payments on the principal of said notes.

That the said E. E. Scannell, before his appointment as trustee, had full knowledge as to how and in what manner G. W. Peckham was carrying on the affairs of said Company, and knew all the intimate dealings of the company, and knew of the execution of said notes made by the said G. W. Peckham, and knew all of the transactions made by G. W. Peckham concerning the affairs of said company, and was familiar and had full knowledge of all the acts complained of by the defendant in their answer and cross action herein.

Therefore, the said E. E. Scannell, having full and complete knowledge of all the transactions complained of by the Wichita Royalty Company in their answer herein, has ratified said acts and transactions by the renewals of the notes sued on and the payment of interest thereon and in the making of payments on the principa' thereof, and having been appointed as trustee with full knowledge and notice of all the acts of G. W. Peckham, which have been complained of herein by the defendant, Wichita Royalty Company, is hereby bound by all the acts of E. E. Scannell, which have been executed by him subsequent to his appointment as trustee, and has confirmed and ratified the acts of G. W. Peckham, and all of said
2145 acts committed by E. E. Scannell have become the acts of the Wichita Royalty Company, and hence the Wichita Royalty Company has ratified all of the transactions sued on herein by the plaintiff, and are now estopped to deny the validity of said acts and transactions.

Wherefore, this plaintiff prays that this cause be abated by virtue of each and both of its pleas in abatement heretofore filed, and if same be not abated, then this plaintiff prays that W. H. Peckham, individually and W. H. Peckham, administrator of the estate of G. W. Peckham, deceased, and that Mrs. Flora A. Kemp and Charles I. Francis, independent executors of the estate of J. A. Kemp, deceased, and that the Security National Bank of Wichita Falls, Texas, be cited to appear and answer herein in terms of law, and that upon the trial of this cause,

the said plaintiff be given judgment in accordance with its original prayer in its original petition heretofore filed, and that said defendant, Wichita Royalty Company, take nothing by reason of its cross action against this plaintiff, and that in the event any sum or sums of money be recovered against this plaintiff by the defendant, Wichita Royalty Company, then this plaintiff prays that it have judgment over and against W. H. Peckham, individually, and W. H. Peckham, administrator of the estate of G. W. Peckham, deceased, Mrs. Flora A. Kemp, and Charles I. Francis, independent executors of the estate of J. A. Kemp, deceased, and the Security National Bank of the City of Wichita Falls, Texas, in whatever sum or sums that it may show itself entitled to recover, and
2146 that it be granted such other and further relief, both in law and equity that this Court may see fit to grant.

BULLINGTON, HUMPHREY & KING,
Attorneys for Plaintiff.

Mr. Rogers:

Together with the answer of J. T. Harrell to the amended cross action of Wichita Royalty Company filed April 27, 1931, Defendant's Exhibit G.

DEFENDANT'S EXHIBIT G.

Filed Apr. 27, 1931, Mrs. A. B. Eichelberger, Clerk Dist. Court Wichita Co. Texas (Mrs. A. B. E.)

Filed 9th day of April, 1937. Geo. W. Parker Clerk, by Elizabeth Hall, Deputy.

In the 78th District Court Wichita County, Texas.

The City National Bank of Wichita Falls, Texas,
vs. No. 24,549-B.
Wichita Royalty Company, et al.

Now comes the interpleaded defendant, J. T. Harrell, in the above entitled and numbered cause, in reply to the

Second Amended Original Answer and Cross action of the defendant, Wichita Royalty Company, and in reply thereto, says:

I.

That there is a misjoinder of causes of action and parties defendant in so far as the Wichita Royalty Company's Second Amended Original Answer setting up a cross action is concerned, as same seeks to set up an action in defense of a promissory note as against the plaintiff, City National Bank, and seeks to set up an action sounding in tort as against this defendant, J. T. Harrell, in that the said Wichita Royalty Company seeks to hold J. T. Harrell liable for said transactions of one, G. W. Peckham, and seeks to hold this interpleaded defendant, J. T. Harrell, liable jointly and severally with the City National Bank on account of certain transactions had between G. W. Peckham as trustee for the Wichita Royalty Company, with the City National Bank and the Security National Bank of Wichita Falls, Texas, which is an action sounding in tort, and, therefore, there is a misjoinder of causes of action in so far as the defendant, J. T. Harrell and the City National Bank is concerned.

2147

Wherefore, premises considered, this interpleaded defendant, J. T. Harrell, prays that this cause of action set up by the defendant, Wichita Royalty Company, in its cross action be, in so far as the action against J. T. Harrell is concerned, be abated and dismissed.

T. R. BOONE,
E. T. DUFF,
Attorneys for J. T. Harrell.

II.

This interpleaded defendant further in the say of a plea in abatement in this cause of action asserted by the

Wichita Royalty Company in its Second Amended Original Petition says:

2148 That if the said J. T. Harrell is a necessary or proper party to said cause of action on the part of Wichita Royalty Company, then in such event there are other necessary parties to this cause of action, if any there be against this interpleaded defendant, J. T. Harrell, who are W. H. Peckham, individually, and W. H. Peckham, administrator of the estate of G. W. Peckham, deceased, Charles I. Francis, and Mrs. Flora A. Kemp, independent executors under the last will and testament of J. A. Kemp, deceased.

That said above named parties are necessary parties if the cause of action of the defendant, Wichita Royalty Company, is properly plead in this case against the said J. T. Harrell, in that it is alleged by the defendant, Wichita Royalty Company, that J. T. Harrell, W. H. Peckham, G. W. Peckham and J. A. Kemp in the late fall of 1925, formed, organized and began operating a copartnership under the firm name of Marlborough Addition, and that said Marlborough Addition was a copartnership engaged in the development of a suburban addition to the City of Wichita Falls, Texas, and in the sale of city lots in said addition, and that a substantial amount of recovery herein sought against this interpleaded defendant, J. T. Harrell, to-wit, $57,218.86, is claimed to be due the defendant, Wichita Royalty Company, by virtue of the expenditure by G. W. Peckham of said sum in the purchase, development and operation of said Marlborough Addition out of funds of the Wichita Royalty Company, and that
2149 said addition was owned and operated by said copartnership as aforesaid, and with the allegation that W. H. Peckham, together with G. W. Peckham, transferred a one-half interest therein to the defendant, Wichita Royalty Company, without authority, but acted as though he did have authority by expending this sum of money belonging to the Wichita Royalty Company

for the benefit and use of said copartnership, thereby resulting in a direct benefit to each and all of the members of said copartnership, to-wit, J. T. Harrell, W. H. Peckham, G. W. Peckham, individually, and J. A. Kemp, and said Wichita Royalty Company are seeking to recover of and from this interpleaded defendant alone, all of said money, when if and any portion thereof is due and owing to the Wichita Royalty Company, it is due and owing not only by J. T. Harrell, but by all four of the members who constitute the Marlborough Addition copartnership, to-wit, J. A. Kemp, W. H. Peckham, G. W. Peckham, or his estate which has W. H. Peckham as its administrator, and J. A. Kemp, or his estate which has Charles I. Francis and Mrs. Flora A. Kemp, as independent executors of said estate of J. A. Kemp.

It is further alleged by said Wichita Royalty Company that said sum of money above named was used for the liquidation of obligations of the Marlborough Addition and that the copartnership of said Marlborough Addition, to-wit, J. T. Harrell, J. A. Kemp, W. H. Peckham, and G. W. Peckham, necessarily received the benefits of said expenditures and said expenditures could not under
2150 said allegations of the defendant, Wichita Royalty Company, have gone alone to J. T. Harrell, but all of said partners must necessarily have reaped benefits therefrom as it is alleged by the Wichita Royalty Company that said monies were unlawfully used by said Marlborough Addition copartnership in the discharge of the amount of the purchase price, development and improvements for the Marlborough Addition, and such being the allegations of the Wichita Royalty Company the four copartners above named necessarily received the benefits of said sum or sums of money, and that the other copartners above named, as well as J. T. Harrell, are necessary parties to this cause of action asserted by the defendant, Wichita Royalty Company, and are necessary parties of the said Wichita Royalty Company to obtain recovery against this interpleaded defendant, J. T. Harrell.

This interpleaded defendant further alleges the facts to be in connection with this plea in abatement, that the allegations of the defendant, Wichita Royalty Company, are in substance and in fact to the effect that by reason of the acts and conduct upon the part of the interpleaded defendant, J. T. Harrell, in accepting, allowing and permitting the monies of the Wichita Royalty Company to be used for the benefit of the Marlborough Addition, same where used unlawfully or wrongfully, and that he, J. T. Harrell, received benefit therefrom by lessening his, J. T. Harrell's obligation to pay the debts of the copartnership under the name of Marlborough Addition, and, therefore, if he, J. T. Harrell, received the benefit of
2151 this money, it necessarily redounded to and was beneficial to the other copartners, to-wit, J. A. Kemp, W. H. Peckham and G. W. Peckham, who likewise received said monies, accepted the same and allowed and permitted the same to be paid by the Wichita Royalty Company in the discharge of the debts of the Marlborough Addition, and, therefore, likewise received certain benefits by virtue of said copartnership and by virtue of said profits coming from the Wichita Royalty Company and are liable to this defendant, Wichita Royalty Company, the same as this interpleaded defendant, J. T. Harrell, and that the said Charles I. Francis and Mrs. Flora A. Kemp, now independent executors under the last will and testament of J. A. Kemp, deceased, as well as W. H. Peckham, individually, and W. H. Peckham, now administrator of the estate of G. W. Peckham, deceased, are each and all resident citizens of Wichita County, Texas, where service may be had on them and on each of them, and that each and all of them are solvent, and there is no reason shown or alleged by the defendant, Wichita Royalty Company in its Second Amended Original Answer why each and all of said last named parties should not be made parties to this cause of action in order to finally adjudicate the rights of the Wichita Royalty Company to recover of and from the copartners of the Marlborough Addition, as well as the adjudication of the rights of said copartners of the

Marlborough Addition as alleged by the defendant, Wichita Royalty Company in its Second Amended Original Answer.

2152 Wherefore, this defendant says that in the event he, J. T. Harrell shall continue as a codefendant to the Wichita Royalty Company's cross action, that there is a want of necessary parties, and that by reason thereof this suit should be abated until the said defendant, Wichita Royalty Company, makes the legal heirs and representatives of J. A. Kemp and G. W. Peckham, as well as W. H. Peckham, individually, parties to this cause of action herein.

Wherefore, this defendant, J. T. Harrell, prays that said cross action of the defendant, Wichita Royalty Company, be abated, as against this interpleaded defendant, J. T. Harrell, until the other members of the copartnership of Marlborough Addition be made parties hereto, and for such other relief in law or in equity that he may be justly entitled to.

T. R. BOONE,
E. T. DUFF,
Attorneys for defendant, J. T. Harrell.

Wherefore, premises considered, this defendant prays that said cause of action or cross action set up by the Wichita Royalty Company in its Second Amended Original Answer be in all things dismissed and abated, and for general and equitable relief for the impleaded defendant, J. T. Harrell.

T. R. BOONE,
E. T. DUFF,
Attorneys for defendant, J. T. Harrell.

2153 State of Texas,
County of Wichita.

I, J. T. Harrell, being duly sworn say that the facts set forth in the foregoing plea in abatement are true and correct, and that I have read over the same, except I do not make affidavit as to the solvency of the estate of G. W. Peckham, deceased.

Witness my hand this the 12th day of April, 1931.
(Signed) J. T. HARRELL.

Subscribed and sworn to before me, a Notary Public of Wichita County, Texas, on this the 12th day of April, 1931.

(Signed) MARY COPELAND,
(Seal) Notary Public, Wichita County, Texas.

III.

Comes now the impleaded defendant, J. T. Harrell, subject to his pleas in abatement heretofore filed, and only in the event such pleas in abatement be overruled, and makes and files this, his answer to the Second Amended Original Answer of the defendant, Wichita Royalty Company, filed herein and for answer thereto, subject to the above, he says:

This impleaded defendant excepts to said answer and cross-action and says that same is insufficient to entitle this defendant, Wichita Royalty Company, to recover anything herein against this impleaded defendant, either in law or in equity and of this he prays judgment of the Court.

2154 IV.

This impleaded defendant further specially excepts (if its former exception be overruled) to the first paragraph

of the defendant, Wichita Royalty Company's Second Amended Original Answer wherein it alleges and brings this suit in the name of E. E. Scannell, Trustee, and one of some thirteen hundred stockholders of the Wichita Royalty Company, who joins herein for himself and all other stockholders of said company, because said petition does not name the other thirteen hundred stockholders or give any kind or character of reason why he does not so name the same, and does not give the address of each and all of these stockholders or give any reason why he cannot do so and does not show any reason or authority for or right to bring this suit in the capacity in which it is brought without naming each and all of the parties and of this he prays judgment of the Court.

This impleaded defendant specially excepts to Wichita Royalty Company's Second Amended Original Answer wherein it attempts to join therein some thirteen hundred stockholders, as said pleading shows that the Wichita Royalty Company is a trust association and no allegation is made showing that Trustee has refused to file this suit, and, therefore, said parties have no right or authority to join herein with the trust estate, and of this he prays judgment of the Court.

V.

This impleaded defendant specially excepts to that portion of paragraph 5 of the defendant, Wichita
2155 Royalty Company's Second Amended Original Answer wherein it alleges that J. T. Harrell, et al. whose names it is not material to allege, were from time to time jointly interested in the purchase for mutual profit of an interest in the oil and gas properties and the sales thereof, constituting inter se a partnership, etc., because the other members of said partnership inter se so alleged by the defendant, Wichita Royalty Company, are not named, and this defendant is not apprized of whom constituted these partnerships inter-se, and is not aware of what partnerships or what interests the said J. T. Har-

rell or G. W. Peckham own, or who constituted these respective partnerships, and the failure to give the other partners of these respective partnerships does not give to this impleaded defendant the relief and information necessary thereto in order to allege a defense herein, and of this, this impleaded defendant prays judgment of the Court that said defendant, Wichita Royalty Company be required to name the other members of the respective partnerships with J. T. Harrell and G. W. Peckham, and for such other orders pertaining thereto as this Court may see fit to issue, and of this he prays judgment of the Court.

VI.

This defendant further specially excepts to the defendant, Wichita Royalty Company's Second Amended Original Answer and cross action in that this defendant says that the same shows upon its face, and according to the wording of said pleading that there is an im-
2156 proper joinder or misjoinder of parties defendant, to-wit, a joinder of the City National Bank with this defendant, J. T. Harrell, upon causes of action in no wise connected or related to each other, and of this he prays judgment of the Court.

VII.

This impleaded defendant further specially excepts to the defendant, Wichita Royalty Company's Second Amended Original Answer in that this defendant, Wichita Royalty's Company, is seeking to hold this impleaded defendant on an alleged cross action growing out of the deposits and withdrawals of accounts that the said Wichita Royalty Company had and maintained in the plaintiff, City National Bank, arising and growing out of numerous transactions, some fifty in number over a period of time of three years which this impleaded de-

fendant had no connection with whatsoever, and by seeking to inter-mingle, mix up and bring this defendant into this suit on account of his connection with the Marlborough Addition it necessarily involves transactions so disconnected with the Marlborough Addition transactions as to hinder, delay and prejudice the rights of this defendant in making his defense to the transactions of the Marlborough Addition or any other action or cross action set up by the Wichita Royalty Company against this defendant, wherein this defendant was not in any manner or way connected therewith, and by reason thereof there is a misjoinder of causes of action and of this, this impleaded defendant prays judgment of the
2157 Court.

VIII.

And for answer herein, if same be necessary, without waiving his plea in abatement, or either of them or any of them, and without waiving his general and special exceptions, or any of them, and subject to the Court overruling each and all of the pleas in abatement, and subject to the order of the Court overruling his general demurrer, and each and all of the special demurrers, comes now this impleaded defendant, J. T. Harrell, and denies each and every allegation set forth in the defendant, Wichita Royalty Company's, Second Amended Original Answer, and says that the same is not true in whole or in part, and of this he puts himself upon the country.

IX.

And for special answer herein, without waiving any of the foregoing proceedings, and subject only to the requirement of this impleaded defendant herein to answer to the merits of this case, this impleaded defendant in special answer thereto in so far as the defendant, Wichita Royalty Company's Second Amended Original Answer is

concerned says that heretofore, to-wit, about the 1st day of June, A. D., 1920, R. R. Robertson by a declaration of trust created what is known as the Wichita Royalty Company by certain articles of association and agreement, duly subscribed and acknowledged by the said R. R. Robertson and filed for record in the office of the County Clerk of Wichita County, Texas, in Volume ..., 2158 page ...., of the Deed Records of Wichita County, Texas, to which reference is here made. By virtue of said articles of agreement and declaration of trust the complete and exclusive affairs of said company were vested in the trustee free of the control of the stockholders. That said declaration of trust, among other things, provided the following:

"The entire affairs of this trust shall be managed by one trustee, who shall own at least one certificate of membership for not less than one share. The trustee may from time to time hire suitable officers for the transaction of the business of this trust; and he may appoint, remove or reappoint such officers, agents and other assistants as he may think best ***"

"The trustee shall have full and exclusive power and authority to conduct the business and affairs of this trust, to purchase, contract for, lease or otherwise acquire, any property necessary or proper for the purpose of the trust; to sell and convey all or any part of the property of the trust; to borrow money on the credit of the trust, and if he deems advisable, to execute notes therefor secured by a mortgage or deed of trust upon the property 2159 of the company, and generally to do all things which in his judgment is necessary and prudent in the management and conduct of the business of the company ***"

That said R. R. Robertson conducted the affairs of said association until he resigned about the .... day of .... A. D., 19...., and under the terms of said declaration of

trust G. W. Peckham was appointed as trustee to succeed R. R. Robertson said appointment being made by the District Court for the 30th Judicial District of Texas in conformity with and pursuant to the articles of the association heretofore referred to. That after said G. W. Peckham had succeeded as trustee for the Wichita Royalty Company he was clothed and vested with the sole and exclusive management and control of said business, and conducted the business of said trust from his qualification and acceptance up until his death in the fall of 1929, and was the sole trustee, having full power and authority to conduct the affairs of said trust at all times complained of in the said defendant's cross complaint herein.

X.

That said G. W. Peckham had full and complete authority to draw checks upon the funds belonging to said association and to make application of said funds, and the plaintiff bank had no higher authority to appeal to in determining the proper application of the funds
2160 than G. W. Peckham, who was the sole trustee and in complete charge of the management of the affairs of said enterprise. That said G. W. Peckham's authority was free from the control of the shareholders of said association, as said shareholders had no legal right to the trust property or funds held or maintained by said trustee, and that said shareholders at all times knew of the appointment of G. W. Peckham as trustee and consented to his appointment and continuation by him of the management of said properties.

XI.

That during all of the times herein complained of the said G. W. Peckham purchased properties for the defendant, Wichita Royalty Company, sometimes taking the title in his own name and sometimes in the name of the

Wichita Royalty Company, sometimes carrying the funds in his own name and sometimes in the name of the Wichita Royalty Company, and transferring properties in his own name to the Wichita Royalty Company and funds in his own name to the account of the Wichita Royalty Company, and likewise transferring funds from the Wichita Royalty Company to funds in his own name; that such was his course of dealing and management of the affairs of said company, and it was known to the company and to its stockholders, or by the use of ordinary diligence could have been known to said shareholders, as said records and books fully disclose these transactions, which records were at all times available and accessible to the shareholders, and by reason thereof all acts, conduct and transactions of the said G. W.
2161 Peckham as trustee were in fact and in truth known to the Wichita Royalty Company.

XII.

That in the fall of 1925, G. W. Peckham and W. H. Peckham negotiated for the purchase of a tract of land adjacent to the city of Wichita Falls, known as the Marlborough Addition, and induced and interpleaded defendant, J. T. Harrell, J. A. Kemp to join them in said purchase. That after the purchase of said property G. W. Peckham acquired the interest of W. H. Peckham, and thereafter without the knowledge of this impleaded defendant sold and conveyed the interest so acquired from W. H. Peckham and the interest owned by him individually to the Wichita Royalty Company, which sale and transfer was made in the early part of 1926. The book and records of the Wichita Royalty Company which were accessible to the stockholders and know to the present trustee, reflected said transactions. That thereafter one-half interest in the assets of the Marlborough Addition were carried upon the books of the Wichita Royalty Company as belonging to said company, and said company acting

through G. W. Peckham as sole trustee expended funds of said Wichita Royalty Company for the purchase and payment of its interest in said property and in the development and improvement thereof, each and all of which transactions were reflected by the books and records of said company and were accessible to and available to all of the shareholders of said company, and were
2162 well known to the present trustee who brings this cross action.

XIII.

That the said Marlborough Addition acting by and through G. W. Peckham and the other copartners borrowed from the City National Bank the sum of approximately Forty Thousand and no/100 ($40,000.00) Dollars, evidenced by a note of the said Marlborough Addition, and indorsed and guaranteed by the said copartners. That said G. W. Peckham, as well as W. H. Peckham, did not advise or inform the other remaining copartners of their sale of their interest in said co-partnership properties to the Wichita Royalty Company, but permitted said properties to remain in the name of G. W. Peckham, who was holding the same as trustee for the Wichita Royalty Company and which fact was known only to the Wichita Royalty Company and its agents, but the expenditures of money for the improvement and development of said addition as well as the purchase price was fully reflected by the books and records of said company and was well known to the present trustee.

XIV.

That shortly after the death of G. W. Peckham said co-partnership was incorporated under the name of the Texas Investment Company, that the corporation was perfected after the death of G. W. Peckham and after the present trustee was appointed. On the 24th of January,

1920, there was a stockholders' meeting, in which E. E. Scannell, trustee, was present and informed the
2163 other co-partners that the Wichita Royalty Company owned a one-half interest in said addition or partnership and was entitled to one-half of the capital stock thereof. Thereupon, on said date the capital stock was issued and one-half of the capital stock was delivered to and accepted by said trustee for the use and benefit of the Wichita Royalty Company. That the said E. E. Scannell was elected president of said corporation; that he signed the certificates of stock; called meetings of the stockholders and board of directors and was elected a member of the board of directors of said corporation, accepted the benefits of said enterprise and the benefits of the ownership of said stock, and the books and records of said Wichita Royalty Company fully reflected all of said facts and they were known to the shareholders of said Wichita Royalty Company, or could have been known by the use of ordinary diligence.

XV.

That when it was ascertained by the remaining shareholders and partners of the Marlborough Addition that G. W. Peckham had acquired for the Wichita Royalty Company a one-half interest in the properties of said copartnership, it was later incorporated, and the said plaintiff bank permitted the administrator of the estate of G. W. Peckham to be relieved from his indorsement and guarantee upon the obligations of the Texas Investment Company, accepted in lieu thereof the indorsement and guarantee of the Wichita Royalty Company, and that the said Wichita Royalty Company by reason of
2164 its ownership of one-half of the capital stock and of the guarantee and indorsement of the obligations owing by said corporation to the plaintiff bank herein, thereafter made payments on said obligations, and the records and books of said Wichita Royalty Company show

payments thereon, all of which payments were made with the full knowledge of the present trustee and imputed knowledge to the shareholders by virtue of the fact that the said trustee was the sole and exclusive manager of said properties and all rights incident thereto and not subject to the control of the shareholders.

XVI.

This impleaded defendant further alleges the facts to be that during 1922 and 1929, and until the death of G. W. Peckham that the said G. W. Peckham was a reputable and highly respected citizen of Wichita County, Texas, and his integrity and reputation for honesty and fair dealing was good, that he was so regarded by all and he was actively engaged in business enterprises, carrying at all times so this impleaded defendant understood a large active bank account with the City National Bank, Security National Bank and other banking institutions, and that he was also engaged individually in the purchase, sale and development of oil properties and other properties and that he conducted the affairs of the Wichita Royalty Company as sole trustee, and that during the period from 1925 until 1928, inclusive, he had a large active bank account in his own name, as well as
2165 in the name of the Wichita Royalty Company, handling large sums of money, and in so far as this impleaded defendant is concerned, or knew or had any knowledge thereof, was handling the affairs of the Wichita Royalty Company as well as his individual affairs in an upright, honorable and honest manner, and that he may or may not have made transfers of monies from the respective accounts, or to the respective accounts, or may or may not have purchased property in his individual name paying therefor and then transferring the same in the name of the Wichita Royalty Company, reimbursing himself for the monies so expended, but in so far as this impleaded defendant was

concerned, he never knew of any circumstances or had any suspicion that the said G. W. Peckham was not handling said accounts properly, or not handling the affairs of the Wichita Royalty Company in any manner other than he had a right to do, and that this impleaded defendant had no means or way of obtaining information concerning the funds which belonged to the Wichita Royalty Company and the funds which belonged to G. W. Peckham individually, as the books of both of said parties were not disclosed or accessible to this impleaded defendant, and this impleaded defendant further says that he was not acquainted with the authority of G. W. Peckham to purchase properties in his own name and then transfer the same to the Wichita Royalty Company, and in this connection this impleaded defendant specially says that he did not know the terms and conditions of the
2166 trust agreement; that the said G. W. Peckham was acting under for the Wichita Royalty Company; other than that he, G. W. Peckham, had authority to borrow money for said company and obligate said company for the payment therefor as he understood and it was generally reputed that G. W. Peckham was the sole, exclusive manager, operator and trustee for the Wichita Royalty Company without any kind or character of limitation, and so far as he knew said G. W. Peckham had the right and authority to check out and make deposits of monies belonging to the Wichita Royalty Company as he, G. W. Peckham, desired, and had complete authority to make such transfers as he, G. W. Peckham, desired, and handled the books, records, transfers and deposits and withdrawals of the Wichita Royalty Company, so this impleaded defendant now alleges and says were at all times open to inspection for or by any one interested, directly or indirectly with the Wichita Royalty Company or the profits thereof, and this impleaded defendant now alleges that the stockholders were charged with the duty of making this inspection of the books, records, transfers and monies belonging to the Wichita Royalty Company.

XVII.

This impleaded defendant, J. T. Harrell specially answers and says that he was never at any time a partner with G. W. Peckham in any oil venture save and except he acquired a small interest in a prospective tract of land in Archer County, Texas, in which he, with W.
2167 T. Knight and G. W. Peckham were joint owners, the said G. W. Peckham carrying the same in his name for the use and benefit of the Wichita Royalty Company, and the title to said property being at all times carried in the name of W. T. Knight, but that same was wholly disconnected with any of the affairs of said impleaded defendant, J. T. Harrell, other than that each of said parties received benefits from and contributed to any deficit that might be due by them to the said W. T. Knight, who carried said property in his name, and that by reason of the foregoing facts this impleaded defendant denies he is in any manner or way liable to the defendant, Wichita Royalty Company for any alleged conversion or misapplication of any funds belonging to the Wichita Royalty Company by the said G. W. Peckham, deceased, if in fact any such were made by him.

XVIII.

This impleaded defendant further alleges that the only transactions other than as stated in the preceding paragraphs which he ever had or in any manner ever had with G. W. Peckham was the transaction or sale to G. W. Peckham in the fall of 1925 or first part of 1926 wherein this defendant, together with one, C. E. Basham, sold, assigned and conveyed for a valuable consideration certain oil rights and royalties in Wilbarger County, Texas, which oil rights and royalties were immediately reflected on the records of the defendant, Wichita Royalty Company, and from which rights and properties the Wichita Royalty Company has received large
2168 sums of money and that said property has been in the possession of and under the control of

Wichita Royalty Company and its trustee since said date, and they are now controlling and asserting ownership therein, and have at all times asserted ownership thereto since the purchase from this impleaded defendant, together with C. E. Basham of the rights therein, and that the price and sum so paid for said interest was reasonable and at no time did this defendant ever receive any sum or sums of money from the Wichita Royalty Company or any trustee that he was not justly and legally entitled to. That by reason of the foregoing facts this impleaded defendant is not liable to the defendant, Wichita Royalty Company for any sum or sums whatsoever.

XIX.

This impleaded defendant further alleges in reply to each and all of the allegations set up by the Wichita Royalty Company in its Second Amended Original Answer that he does not know of any misapplication or conversion of any funds or sums of money or property that the said G. W. Peckham committed or perpetrated on the Wichita Royalty Company, and, therefore, denies any connection with any alleged conversion or alleged misapplication, but specially says that he had nothing to do therewith and was not cognizant of any facts or circumstances that would cause him to believe said facts and knew of no misapplications or conversions on the part of said G. W. Peckham, and was not in a position to learn the same, as he did not have charge or access to the books and records of the Wichita Royalty Company or the books and records of G. W. Peckham and therefore could not by the use of any means been able to discover any misapplication or conversions, if any there were, and therefore by reason thereof the said defendant, Wichita Royalty Company, is not entitled to recover any sum or sums whatsoever against this impleaded defendant.

2169

That the defendant, Wichita Royalty Company, as well as its stockholders and present trustee, were fully conver-

sant and had knowledge, and knowledge was imputed to the stockholders of all of the facts hereinabove alleged, that the various stockholders had agreed and consented to the plan of management of said business enterprise, to-wit, the Wichita Royalty Company by G. W. Peckham, and had vested in him complete authority, free from their control, the books and records of said Company were open to them for inspection, which disclosed all of the facts above set forth, that they were charged with knowledge of such transactions and having knowledge thereof, both through their trustee and sole manager as selected by them, they accepted the benefits of each and all of the transactions, and by virtue thereof, they are now estopped to set up any cause of action against this impleaded defendant by reason of any alleged conversion of funds belonging to the Wichita Royalty Company by G. W. Peckham.

That said defendant, Wichita Royalty Company, and its shareholders were further charged with
2170 knowledge that G. W. Peckham had purchased one-half interest in Marlborough Addition, that the books and records of said Company disclosed said facts and disclosed expenditures made by G. W. Peckham therefor, and disclosed the ownership of said property and the subsequent owners of the corporate stock, and that said stock was accepted by the present trustee, and whatever benefits that were to be derived therefrom were accepted by the Wichita Royalty Company and its shareholders, and they are, therefore, estopped now to complain that the expenditure of funds was ultra vires and unlawful, and are bound by the payment of the Wichita Royalty Company of obligations growing out of the ownership of the one-half interest in Marlborough Addition, as well as all other transactions hereinabove detailed and as set out in defendant's, Wichita Royalty Company's second amended original answer.

Further pleading herein and without admitting any of the allegations contained in the defendant's, Wichita

Royalty Company's second amended original answer and cross action, but specifically denying the same, this impleaded defendant says that if any cause of action said defendant ever had against them, the same is now barred by the Statute of Limitation of two years, and expressly pleads said Statute in bar of defendant's right to recover herein, as any cause of action that defendant might have, arose more than two years prior to the filing of its petition and cross-action herein, and all of said transactions were fully known and fully disclosed to it and its
2171 stockholders, and they were charged with notice thereof for more than two years prior to the filing of said petition and cross-action, and this impleaded defendant here and now pleads the two year Statute of Limitation as a bar of said defendant's right to recover herein.

Further pleading herein and without admitting any of the allegations contained in the defendant's, Wichita Royalty Company's Second Amended Original Answer and Cross-Action, but specifically denying the same, this impleaded defendant says that if any cause of action said defendant ever had against them the same is now barred by the Statute of Limitation of four years, and expressly pleads said Statute in bar of defendant's right to recover herein, as any cause of action that defendant might have arose more than four years prior to the filing of its petition and cross action herein, and all of said transactions were fully known and fully disclosed to it and its stockholders, and they were charged with notice thereof for more than four years prior to the filing of said petition and cross action, and this impleaded defendant here and now pleads the four year Statute of Limitation as a bar of said defendant's right to recover herein.

XX.

This impleaded defendant further says, in reply to each and all of the allegations set up by the Wichita Royalty

Company in its Second Amended Original Answer, that he does not know of any misapplication or conversion of any fund or sums of money or property that the said George W. Peckham committed or perpetrated
2172 on the Wichita Royalty Company, and, therefore, denies each and every allegation set up in the Wichita Royalty Company's Second Amended Original Answer, but in the event, and only in the event that said allegations set up in the Second Amended Original Answer be shown on the trial of this cause to be true, then this impleaded defendant says that all of the transactions set up in the Wichita Royalty Company's Second Amended Original Answer on the part of George W. Peckham were, in some manner or way and in numerous ways, reflected by the books and records kept in the office of the Wichita Royalty Company during the life of the said George W. Peckham and were, at all times, open to the inspection of the Wichita Royalty Company and its beneficial owners, and that the checks and vouchers and debit statements of the bank in which these checks were run, together with entries thereon on the records of the Wichita Royalty Company were returned to the office of the Wichita Royalty Company immediately after the cashing of said checks and upon the end of the month, at which time said checks were cashed, the bank statements showing debits thereon were returned to the office of the Wichita Royalty Company and all kept and remained, and without being hidden, without any seclusion, without any attempt on the part of George W. Peckham, or anyone else, to prevent the beneficial owners of the Wichita Royalty Company of inspecting the same and having knowledge thereof, and that these transactions pertaining to this impleaded defendant occurred during the years of 1925, 1926 and 1927; the last pleaded check or transaction occurring on February 19th, 1927; and dur-
2173 ing all of this period Company taken any action whatsoever pertaining to these transactions for a period of two years after the last transaction or any of the transactions, this impleaded defendant would have

had, at that time, the opportunity to have had the testimony of George W. Peckham to explain these respective transactions and—if any there were that were not rightfully charged to the account of the Wichita Royalty Company—then the said George W. Peckham, being at that time solvent—could have and would have responded to this impleaded defendant, as this impleaded defendant could and would have been entitled and able to recoup from George W. Peckham, individually, any sum or sums of money that in any manner or way affected the Wichita Royalty Company, or affected this impleaded defendant; and that the Wichita Royalty Company—(in delaying this action with these records and transactions, clearly open to inspection on their part or any of their part or any beneficial interest owners of Wichita Royalty Company's part)—have deprived this impleaded defendant of the right to have the testimony of George W. Peckham who has since died and died prior to the time of the institution of this cause of action, and have deprived this impleaded defendant of a chance or an opportunity to recoup any loss or loss that this impleaded defendant may sustain by virtue of the fact that since said time the said George W. Peckham has become insolvent and, therefore, this impleaded defendant has been deprived of rights and privileges of which he would not have been deprived had the said Wichita Royalty Com-
2174 pany or any of its beneficiaries prosecuted said alleged cross-action or cause of action within a reasonable length of time after the occurrence of same, or after they knew same, or by the use of ordinary diligence should have known same and, therefore, this impleaded defendant here and now pleads leches and equitable estoppel on the part of said Wichita Royalty Company from any kind or character of recovery herein against this impleaded defendant and by reason thereof, this impleaded defendant should be allowed to go hence without day, together with his costs.

XXI.

This defendant further pleading herein and as a cross action against the following named parties, to-wit: W. H. Peckham, a resident and citizen of Wichita County, Texas, and W. H. Peckham, administrator of the Estate of George W. Peckham, deceased, Charles I. Francis and Mrs. Flora A. Kemp, independent executors under the last will and testament of J. A. Kemp, deceased; this impleaded defendant here and now re-pleads all of the facts hereinabove alleged in this answer, as well as says that if any of the facts or allegations set forth in Wichita Royalty Company's Second Amended Original Answer to be true, which this impleaded defendant does not admit but specially denies, but that in the event it be shown that any of said facts or all of said facts are true, then this impleaded defendant says that at the time of the transactions set up in the defendant's, Wichita Royalty Company's Second Amended Original Answer,
2175 the said J. A. Kemp was Chairman of the Board of Directors of the City National Bank and that P. P. Langford of Wichita Falls, Texas, was the President of the City National Bank and that W. L. Robertson and C. E. Basham and this impleaded defendant were the Vice-Presidents of said City National Bank and, therefore, the said J. A. Kemp as Chairman of the Board of Directors of the City National Bank had the same information pertaining to the transactions with George W. Peckham in so far as they pertain to the Marlborough Addition to the City of Wichita Falls, Texas, being one of the transactions specifically mentioned in the defendant's, Wichita Royalty Company's, Second Amended Original Answer as this impleaded defendant, and was acquainted with all of the facts that impleaded defendant was acquainted therewith and that all of the expenditures of moneys of the Wichita Royalty Company for the purchase of the Marlborough Addition and the improvements and betterments thereon made, which amounted to approximately the sum of $60,000.00 or $70,000.00, as al-

leged in the Wichita Royalty Company's Second Amended Original Answer, were made and expended under such circumstances as that the said J. A. Kemp had the same information and knowledge thereof as this impleaded defendant, J. T. Harrell, and that said J. A. Kemp, together with W. H. Peckham whom this impleaded defendant specially alleges was the brother of said George W. Peckham, was an associate with George W. Peckham and was a member of the partnership of Marlborough Addition and was acquainted with all of the transactions pertaining to the Wichita Royalty Company and
2176 was acquainted with all of the facts pertaining to the transaction that George W. Peckham had with the Wichita Royalty Company and the said W. H. Peckham, being the member of the Marlborough Addition partnership, that he with the said J. A. Kemp, as well as George W. Peckham, were all recipients of the benefits, if any there were, from the contributions obtained or paid out of the Wichita Royalty Company, and were each and all acquainted with the facts and even more so than this impleaded defendant; and this impleaded defendant here and now says that if any of the facts or allegations set forth in the defendant's, Wichita Royalty Company's, cross action against this impleaded defendatn be true, which this defendant specially denies but says that if it be true, then said allegations and said facts so alleged in the defendant's, Wichita Royalty Company's Second Amended Cross Action, are here and now pleaded over and against the said defendant, J. A. Kemp, or his executors, Charles I. Francis and Mrs. Flora A. Kemp and are also, hereby, specifically pleaded against W. H. Peckham individually and against W. H. Peckham as the administrator of George W. Peckham, deceased, and in the event of a recovery by the defendant, Wichita Royalty Company, against this impleaded defendant, J. T. Harrell, then this impleaded defendant, J. T. Harrell, hereby, alleges that he is entitled to recover over and against the said W. H. Peckham individually and as administrator of the estate of George W. Peckham, deceased,

and the estate of J. A. Kemp, to the extent of three-fourths of whatever amount or sum that the
2177 said defendant, Wichita Royalty Company may recover against this impleaded defendant; as said W. H. Peckham, George W. Peckham and J. A. Kemp were the owners of three-fourths of the Marlborough Addition and, therefore, this impleaded defendant, in the event of a recovery against him on the Marlborough Addition transaction, is entitled to a judgment over and against the said W. H. Peckham and the estates of J. A. Kemp and George W. Peckham to the extent of three-fourths of the amount thereof, as said parties owned three-fourths interest in and to the Marlborough Addition and that the said impleaded defendant, J. T. Harrell, should be entitled to recover against them three-fourths of whatever sum or sums the said defendant, Wichita Royalty Company, may recover by virtue of the transactions relating to the Marlborough Addition against this impleaded defendant and he here and now requests and prays that said above named parties, to-wit, Charles I. Francis and Mrs. Flora A. Kemp, as independent executors of the estate of J. A. Kemp, deceased, and W. H. Peckham, individually and W. H. Peckham as the administrator of the estate of George W. Peckham, deceased, be made parties to this suit and that citation be issued against them in terms of law, requiring them to show cause why they should not be made to respond in the manner as the law requires under the pleadings herein filed.

Wherefore premises considered, this impleaded defendant prays that this cause be abated by virtue of each and all of his pleas in abatement heretofore filed, and if same be not abated then this impleaded defend-
2178 ant prays that W. H. Peckham individually and W. H. Peckham, administrator of the estate of George W. Peckham, deceased, and Mrs. Flora A. Kemp and Charles I. Francis, independent executors of the estate of J. A. Kemp, deceased, be cited to appear and

answer herein in the terms of law, and that upon a trial of this cause this impleaded defendant be allowed to go hence without day, together with its costs in so far as the defendant, Wichita Royalty Company is concerned, and that the said Wichita Royalty Company take nothing by reason of its cross action against this impleaded defendant, but that in the event any sum or sums of money be recovered against this impleaded defendant by the Wichita Royalty Company, then this impleaded defendant, J. T. Harrell prays that he have judgment over and against said W. H. Peckham individually and W. H. Peckham as administrator of the estate of G. W. Peckham, deceased, and Mrs. Flora A. Kemp and Charles I. Francis, independent executors of the estate of J. A. Kemp, deceased, for three-fourths of any and all sum or sums of money that the said Wichita Royalty Company may show itself entitled to recover against this defendant, and that he be granted such other and further relief, both in law and equity that this Court may see fit to grant.

T. R. BOONE,
E. T. DUFF,
Attorneys for defendant, J. T. Harrell.

2179 Now comes this impleaded defendant, J. T. Harrell, in reply to the cross action of the City National Bank of the City of Wichita Falls, Texas, wherein it is seeking to recover against this impleaded defendant any sum or sums of money which may be recovered against it by virtue of the cross action of the Wichita Royalty Company, and for such reply this defendant says:

I.

That he excepts to the allegations of the City National Bank of the City of Wichita Falls, Texas, and says that the same are insufficient in law or equity to require him to answer, and of this he prays judgment of the Court.

II.

And for answer thereto, if same be necessary, this defendant denies each and every allegation set forth in Plaintiff's cross action, and of this he puts himself upon the country.

III.

Further answering herein, if same be necessary, to the petition of the City National Bank, wherein the City National Bank is seeking to recover of and from this defendant any sum this defendant specially says that all of the allegations set up by the City National Bank wherein the City National Bank is seeking to recover against this defendant the sum of $75,000.00 on account of the transactions pertaining to the Marlborough Addition, this defendant says that he had no knowledge of the ownership of the Wichita Royalty Company in and to the Marlborough Addition until long after the death of
2180 G. W. Peckham, and that he was not apprized of and did not know that said G. W. Peckham was using the monies of, if he ever did use any, the Wichita Royalty Company in the payment of the purchase price or expenditures for the Marlborough Addition, and not being in a position to learn of these facts is not responsible for what acts or conduct the said G. W. Peckham may have committed in connection with any representative or representatives of the City National Bank, and of this he is ready to verify.

IV.

And for further answer therein, if same be necessary, this defendant says that certain transactions on the part of the bank were done without his knowledge or consent, and if they were not done rightfully, which this defendant believes they were, but should he be mistaken there-

in, that same were done more than two years prior to the filing of this cross action, and, therefore, same is barred by the two year statute of limitation, which this defendant here and now pleads.

Wherefore, premises considered, this defendant prays that the City National Bank of Wichita Falls, Texas, take nothing by reason of its cross action aginst him and that he be allowed to go hence without day, together with his costs, and for such other and further relief, in law or equity that this Court may see fit to grant.

T. R. BOONE,
E. D. DUFF,
Attorneys for defendant, J. T. Harrell.

2181 Mr. Rogers:

Also the mandate of the Supreme Court of Texas, certified copy of the opinion filed in the State District Court, in 1936, Defendant's Exhibit H.

DEFENDANT'S EXHIBIT H.

In The Supreme Court of Texas.

From Wichita County, Second District.

Wichita Royalty Company, Et Al, Plaintiffs in Error.

vs. No. 6800

The City National Bank of Wichita Falls, Et Al, Defendants in Error.

Suit was by the City National Bank of Wichita Falls, defendant in error, against Wichita Royalty Company and E. E. Scannell, as its Trustee and individually. Recovery was sought by the Bank of a balance alleged to be

due on two notes, one executed, and the other indorsed, by the Royalty Company, together with foreclosure of liens on certain properties. The Royalty Company, through E. E. Scannell, Trustee, pleaded various defenses and filed its cross action against the Bank and impleaded J. T. Harrell, one of its principal officers, seeking from both recovery of the Company's alleged balance of deposit, less authorized charges against it. W. H. Peckham, individually and as Administrator of the estate of G. W. Peckham, deceased, and Flora A. Kemp and C. I. Francis, independent executors of the last will and testa-
2182 ment of J. A. Kemp, deceased, were impleaded parties, brought into the case because of alleged transactions of W. H. Peckham and J. A. Kemp prior to his decease, with G. W. Peckham, relating to Marlborough, a real estate venture in which the parties were engaged in putting on a residence addition to the City of Wichita Falls.

The trial Court instructed a verdict in favor of the Bank on the two notes, with foreclosure, and against the Royalty Company on its cross action, and denied recovery against the impleaded defendants. Upon appeal by the Royalty Company the judgment was affirmed by the Court of Civil Appeals by a divided Court. 74 S. W. (2) 662. The majority opinion is by Judge Dunklin, Judge Power filing a concurring, and Judge Lattimore a dissenting, opinion. Upon first consideration Chief Justice Conner and Justice Lattimore constituted a majority of the Court and voted to reverse and remand, each filing an opinion, Judge Conner concurring in Justice Lattimore's dissent. Following the death of Judge Conner and the appointment of Judge Power, the first decision was reversed, Judge Power filing an opinion concurring in the opinion originally filed by Judge Dunklin and subsequently supplemented by him. 74 S. W. (2) 682. Judge Lattimore adhered to his dissent as expressed in the opinion theretofore filed. 74 S. W. (2) 682. Writ of error was granted on the application of the Royalty Company and E. E. Scannell, Trustee, "On the importance of the

question" and notation was made that the case
2182a was to be submitted with Q. A. & P. Ry. Co. vs. Wichita State Bank & Trust Co., 61 S. W. (2) 170, in which writ of error had theretofore been granted. The cases were submitted together before the Court and Commission sitting in banc.

The Royalty Company was organized in 1920 under a Declaration of Trust, in form a common law trust, membership in which is evidenced by certificates of interest. The certificate holders are referred to in the Declaration as stockholders. They are about 1,300 in number and widely scattered. Briefly, the Company is an association of persons who furnished the capital for a business to be operated for their joint account and for mutual profit, and to be conducted by a chosen agent or trustee who was specially empowered as set forth in a Declaration of Trust similar in essential respects to that involved in Thompson vs. Schmitt, 115 Tex. 53, 274 S. W. 554. Its legal effect was to create a partnership in which the Trustees were managing agents, or partners, and such is the legal effect of the Declaration here involved, except, that only one trustee is provided as managing agent. R. R. Robertson was the first trustee. Upon his resignation in 1923 G. W. Peckham was appointed in the manner set forth in the Declaration, as his successor. A few days after Peckham's death, on November 7, 1929, E. E. Scannell was appointed trustee. Prior thereto and even before Peckham was appointed trustee. Prior thereto and even before Peck-
ham became trustee, Scannell had been the book-
2183 keeper of the Company, and nominally, though not in reality, its secretary-treasurer. The business to be operated as set out in the Trust Declaration was to purchase and sell oil and gas royalties, and other oil and gas properties. No other purpose is set forth, or authorized. The Declaration stipulates that its affairs are "to be managed by one trustee"; that the trustee shall have full and exclusive authority to conduct the business of the Trust; to purchase, contract for, lease, or otherwise acquire, any property necessary or proper for

the purpose of the Trust; to sell and convey all or any part of the property of the Trust; to borrow money on the credit of the Trust; and "if he deems advisable, to execute notes individually secured by a mortgage or deed of trust upon the property of the Company, and generally to do all things which in his judgment is necessary and prudent in the management and conduct of the business of the Company." The Trustee's powers are broad, but no authority is granted for their exercise other than to carry on the business of the Trust within its defined limits. He is empowered to "declare dividends from the net income of the Trust, and his decision as to the amount of dividends is final." No stipulation of the Declaration is susceptible of the construction that the trustee is privileged to use the trust property or credit for his own benefit. While he is to be held responsible "only for his own wilful and corrupt breach of trust and not for any honest error of judgment," he has no interest in the Trust or its property other than
2184 a managing interest, and such interest as may be evidenced by a certificate of ownership. The Declaration provides that all investments made and all property acquired "*shall be made and held in the name of the Trustee as such Trustee.*" (Italics ours); also that "the Trustee shall hold all the funds and property now or hereafter held by, or paid to, or transferred or conveyed to him or his successor or successors as Trustee hereunder in trust for the purpose, with the powers and subject to the limitations" therein declared, "*for the benefit of the castui que trustent.*" (Italics ours).

The Trustee through an arrangement made between the Bank and Peckham as Trustee, carried with the Bank in its own name, Wichita Royalty Company, a deposit account, G. W. Peckham also had in the bank a deposit account individually throughout the period of his trusteeship. The Trust had a liability record with the Bank, borrowing from it and repaying to it money through Peckham as Trustee from time to time. Likewise Peck-

ham had an individual liability record with the Bank, borrowing and repaying in part from time to time. Also Peckham was engaged in part individually in the same business as the Trustee, and throughout the period involved bought and sold in that business on his own account.

The statement of facts contains more than 1100 pages, but it, together with a statement of the pleadings, is sufficiently summarized in the majority and minority opinions of the Court of Civil Appeals in connection with the questions there discussed, to serve as a basis for decision of the questions before us. Reference is made to the summation referred to, as a restatement would unduly prolong this opinion.

2185

The questions presented grow out of transactions between the Bank and the Trustee, Peckham, and involve transactions of the Trustee with the Bank and certain of its officials which touched and affected the interests of the Trust; also transactions and acts of Scannell as Trustee, with the Bank and its officials after Peckham's death. The case involves primarily a series of transactions carried out in the same way over a long period of time during which Peckham, by means of his checks as Trustee, payable usually to the Bank, transferred large sums of money from the Trust account into his active individual account, whence he checked it out by means of checks signed by him personally, largely for non-Trust purposes.

These transactions lie at the very foundation of the Bank's case, and will be stated in their chronological order rather than in the order pleaded. For nearly two years, so far as the record reveals, Peckham, as Trustee, had observed in his banking operations the requirement of the Trust of the Trust Declaration that all property of the Trust should be held in the name of the trustee as such. On October 8, 1925, he began a system of operation with respect to the deposit account of the Trust in

violation of that requirement by causing a transfer of
$5,500 to be made from the Trust account to his
2186 own individual account in the same bank. Generally speaking the transfers were made by means of what is known as voucher checks. The statement of the majority opinion of the Court of Civil Appeals relating to the transfer reads:

"During the period beginning October 8th, 1925, and ending November 12, 1929, Geo. W. Peckham drew 49 checks on funds deposited in plaintiff bank to the credit of the Wichita Royalty Company, aggregating the sum of $134,712.14, the checks being signed by him as trustee for the Royalty Company, and after his death seven additional checks were drawn on the same account by Scannell, the substitute trustee, aggregating $10,055.42. Forty-five of the checks drawn by Peckham, aggregating $119,473.98, were made payable to the bank, and 4, totaling $9,238.16, in favor of Peckham, personally, and for those 49 checks which he deposited he was given personal credit on the books of the bank. * * * Peckham also received credit on his personal account for $6,000.00 realized from oil investments belonging to the Royalty Company which had theretofore been deposited to his personal credit in the Security National Bank."

Most of the checks used in making the transfers were voucher checks, and when issued showed on the attached vouchers that they were in payment of the items noted thereon. The following is typical of the form used:

2187 Remittance Advice.

Attached hereto is our check in full settlement of the items listed below. If not correct please return with explanation.

Description Detail Total

To apply on note held by City National Bank $1,500.00.

Detach here before depositing check
Perforation

Wichita Royalty Company,

Wichita Falls, Texas.

August 16, 1927. No. 635.

When properly indorsed Pay to the order of City National Bank $1,500.00 Exactly One Thousand Five Hundred Dollars no cents.

To the City National Bank,
Wichita Falls, Texas.
By G. W. PECKHAM,
Trustee."

On the back of the lower half of the checks were printed above the usual place of indorsement these words: "Indorsement hereon by the payee constitutes acknowledgment of full payment of the items listed on the accompanying remittance statement. No other receipt required." Peckham requested the tellers handling the deposits of these checks to give him credit individually for the proceeds, which was done. No reason is given by the Bank or any of its officials for dealing with the Trustee and the Trust account in the manner detailed other than a desire to comply with the personal request of Peckham in whom they reposed confidence. As
2188 stated by vice-President Harrell in response to an inquiry in this connection: "We would endeavor to comply with the wishes of the customers." The vouchers were detached from the checks before presentment, and the Bank gave Peckham's personal ac-

count credit for the proceeds solely upon his request, and did so without inquiry or investigation on its part, or any showing of authority whatsoever on Peckham's part.

In the manner stated above the funds of the Trust and those of Peckham were commingled in his personal account. Nor is it material so far as the result is concerned that the checks used in making the transfers were in some instances payable to the Bank, and in some instances to Peckham himself, as the result of the transactions was to destroy the evidence of the stockholders' title to their moneys standing in the name of Wichita Royalty Company and to substitute for it evidence of the Trustee's personal title. This result was accomplished by the cooperative acts of Peckham and the Bank with knowledge on the part of the bank that the Trust funds were being commingled with those of Peckham, and with further knowledge that a part of the property of the trust was being held and carried in the name of the Trustee personally and not as trustee.

It is not important as bearing on the questions involved that Peckham could have drawn checks on the Trust account and cashed them, and deposited the proceeds in his personal account, thus accomplishing the same
2189 result. He did not use this method of getting control of the Trust funds, by which the Bank would not have been connected with the misappropriation; but used the method stated above, which connected the Bank with it. The dissimilarity of the two methods from the standpoint of legal significance is pointed out in the Q. A. & P. Ry. Co. (Com. app.) .... S. W. (2) ...., (opinion this day adopted) in which Toronto Club vs. Dominion Bank, 25 O. N. T. L. Rep. 330; Broadway vs. Bushwick Natl. Bank, 216 N. Y. S. 713, and Underwood Ltd. vs. Bank of Liverpool, 1 K. B. 775 (1924), are cited.

Further facts in connection with the manner of operating the two account disclose that from October 8, 1925,

the date when Peckham made his first transfer of Trust funds to his personal account, throughout the entire period involved, he continued making similar transfers from time to time and the Bank continued its participation with him in so doing. The operations of Peckham were not confined to effecting with the Bank's acquiescence the transfer of large sums of the Trust money to his personal account, and in thus commingling the Trust property with his own in his individual account. The majority opinion of the Court of Civil Appeals in detailing the further operations with respect to the withdrawal and application of the commingled funds, says:

"Most of the 57 checks on which the cross action was based were made payable to the bank while others were made payable to Peckham, but all of them
2190 were given in payment for oil royalties, investments and improvements in the Marlboro Addition and as payments on outstanding promissory notes and they were all so applied. The checks so given for investments and improvements in the Marlborough Addition and covering one-half of the total amount of such investments aggregated $55,719.44. The checks applied to investments in oil royalties and oil properties aggregated $57,240.00. Thirty-three of the checks were given as payments on promissory notes, of which 26, aggregating $23,751.75, were drawn by G. W. Peckham, and 7 * * * aggregating $10,055.42, were drawn by Scannell as trustee after Peckham's death. Some of the checks so given by Scannell were applied on the Royalty Company's note to the Bank given for the two loans above mentioned. and the rest as payments on the Marlborough Addition notes. Nineteen of the checks drawn by Peckham were likewise applied as payments on the same notes; but seven of them, * * * aggregating $10,750.00, were credited on the books of the bank as payments on Peckham's personal notes. The evidence showed that prior to the date of check No. 584, Peckham had paid to the Royalty Company $500.00 to be applied on the Royalty

Company's notes to the bank. And the books of the Royalty Company showed that Peckham had been given further credits on his account with the Company as follows: August 31, 1927, for $500.00 to be applied on the Company's notes to the bank; October 9, 1927, for $1336.00; November 25, 1927, for $1500.00, to be used in payment of
the Royalty Company's note to the bank; and
2191 February 15, 1928, for $3485.00. Those five items aggregate $7321.00 and if it be said that the 7 checks show payments to the bank of trust funds on Peckham's personal debts to the bank, then, as insisted by the bank, we believe there should be deducted therefrom $7321.00 shown above, leaving a balance of $3429.00, only.

"Whether or not on the cross action those 7 checks or at least that balance of $3429.00 was chargeable to the bank as trust funds received by it on Peckham's personal indebtedness, with right of appellants to recover therefor, it is unnecessary for us to decide, since it is my conclusion that at all events appellants' demand therefor was barred by the statute of limitation hereinafter discussed."

The minority opinion, referring to the further operations in connection with the checking out of the funds in the commingled account, says:

"Peckham used a large sum of the trust funds to pay his personal obligations to the appellate bank and to Harrell and Basham, officials of the bank. Counsel for appellees in their briefs practicaly admit that same was slightly more than $7,000. Appellant contends it was more than $57,000. We shall not attempt to reconcile that diference."

Defendants in error say in their supplemental brief that:

"By carefully checking and rechecking, it will be found
that of this $57,000 not over $2,000 may be traced
2192 to moneys which he took from the Wichita Roy-

alty Company account and placed in his own account and then subsequently applied upon his indebtedness."

It appears conclusively that shortly after Peckham began making the transfers of Trust funds to his personal account he began making payments on his personal indebtedness to the Bank out of the commingled funds. It is undisputed that on October 8, 1925, Peckham made his first transfer of Trust funds. On that date by a check made payable to the order of the Bank he transferred $5,500.00 from the Trust account into his personal account. There is no evidence of any balance standing to his credit in his account at that time, or of any other deposit of funds credited to his account between the date of the transfer and November 17, 1925. On the last named date Peckham made his first payment out of his personal account to be applied on his personal indebtedness to the Bank.

The rule that the acceptance of payments from trust funds by a creditor to be applied on its debt establishes actionable participation by the creditor in the wrongdoing of the debtor, is definitely established and recognized in this State, as well as in other jurisdictions and by leading text writers. U. S. F. & G. Ry. Co. vs. Adoue & Lobit, 104 Tex. 379; Interstate National Bank vs. Claxton, 97 Tex. 569, 80 S. W. 604; Bischoff vs. Yorkville Bank, 218 N. Y. 106, 112 N. E. 759; Alien vs. Puritan Trust Co. (Mass), 97 N. E. 916; Massachusetts Bonding Co. 2193 vs. Standard Trust etc. Bank (111.), 166 N. E. 123,126; Havana Central R. R. Co. vs. Central Trust Co., 204 Fed. 546; State vs. American State Bank (Neb.), 187 N. W. 769; Ward vs. City Trust Co. (N. Y.), 84 N. E. 585; Bogerg, Trusts and Trustees, Vol. 4, Sections 907 912; Morse on Banks and Banking, (6 ed.), Vol. 1, Section 317; Perry on Trusts and Trustees (7 ed) Vol. 11, Section 828.

The rule is clearly recognized in the Claxton case, supra, by Justice Williams, speaking for the Court as follows:

"This case is to be distinguished from those in which a bank undertakes to acquire title to, an interest in, or benefit from a fund held in trust by a depositor. In attempting to acquire such a right or benefit the bank becomes a party to the action of the trustee and stands as any other person dealing with one holding property in a fiduciary capacity. The question of notice of the title of the person holding the property and his power over it arises, and a bank cannot any more than any other person acquire that which belongs in equity to another, if it have notice of his rights; and if it thus aid a trustee in diverting trust property from the beneficiary, it becomes liable as a wrongdoer."

Bogerg in the section of his recent work cited above states that:

"If a creditor of the trustee in his personal capacity, and not as trustee, * * * accepts from the trustee * * * commercial paper which runs to the 2194 trustee * * * as payee * * * in payment of the personal debt of the trustee, the creditor is deemed a participator in a breach of trust by the trustee if there was no authority to use the trust credit or paper for such private purpose."

In the same section the author states that the rule is applicable where the bank accepts in payment of its debt the trustee's checks drawn on an account known to the bank to contain both private and trust funds, citing, among other cases, U. S. F. & G. Co. vs. Adou & Lobit, supra, and Bischoff vs. Yorkville Bank, supra.

In the Adot & Lobit case the bank, after receiving payment of a debt owing to it by a fiduciary from a fund deposited with it by the fiduciary (guardian) in such

manner as to charge the bank with knowledge of its trust character, placed to the personal credit of the fiduciary the remainder of that fund in the sum of $5,000. Thereafter, the bank on the fiduciary's individual check paid out the remaining balance to this brother. Justice Ramsey, who wrote the very able opinion in the case, quoting therein from Gray & Johnson, L. R. 3 Eng. & Ir. Appl. cas. 1, as bearing upon the question of participation by the bank, says:

"It has been very well settled that, if an executor or a trustee who is indebted to a banker, or to another person having the legal custody of the assets of a trust estate, applies a portion of them in the payment of his own debt to the individual having that custody, the individual receiving the debt has at once not only abundant proof of the breach of trust, *but participates in it for his own personal benefit.*" (Italics ours)

2195

Justice Ramsey, speaking further for the Court in holding the bank liable says:

"The principal question in the case is, Were Adou & Lobit (a private bank) charged with notice of the trust character of the funds in question, *and were their acts and conduct in relation to same such as to render them liable?* This we think must be answered in the affirmative. Such was clearly the effect and fair purport of the decision of this Court rendered on the 22d of January, 1908, in the case of Moore v. Hanscom, 101 Tex. 293, 106 S. W. 876. The facts of that case, so far as essential to a decision by us now, are practicaly identical with the facts in the present record. It was there said: 'When Compton deposited in the bank of Adou & Lobit the sum of money due to the estate of Menard James, and the money was entered to the credit of A. J. Compton, guardian, the fund so deposited became the money and property of the ward's estate. Anderson v. Walker, 93 Tex. 119, 53 S. W. 821; Skipwith v. Hurt, 94 Tex. 322, 60 S. W. 423. Lobit testified that the bank would have paid the money on

presentation of the certificate of deposit by Compton, or by any person holding it with Compton's indorsement on it. Adoue & Lobit were notified by the fact that Compton made the deposit as guardian that the money belonged to the estate of the ward, and they
2196 would not lawfully pay it to any person except by Compton's order, and then only for the uses of the estate; that is, they could not have knowingly applied the money in their hands to the payment of any order made by Compton in any other character than that of guardian, nor could they have applied the money to the payment of any debt due from Compton personally to them or to any other person. * * * In the absence of *notice* or knowledge, a bank can not question the right of its customer to withdraw funds, nor refuse (except in the instances already noted) to honor his demands by check, and therefore, even though the deposit be to the customer's credit in trust, the bank is under no obligation to look after the appropriation of the trust funds when withdrawn, or to protect the trust by setting up a jus tertii against a demand. *But if the bank has notice or knowledge that a breach of the trust is being committed by an improper withdrawal of funds, or if it participates in the profits or fruits of the fraud, then it will be undoubtedly liable.*" (All italics in excerpt ours).

It will be noted that the Bank in the Adoue & Lobit case was held liable not only for that part of the trust funds received in payment of the fiduciary's debt, but also for the $5,000 thereafter checked out by him to another. The Court on rehearing expressly refused to give controlling effect to the bank's receiving part of the fund, basing the recovery of the $5,000 upon the sole ground that the act of the bank in placing the trust funds to the personal account of the fiduciary, whence they were
2197 checked out for other than a trust purpose, was "obviously wrongful" and that the bank "must bear the resulting consequences."

The Bank complains that the rule is harsh in view of the ratio between the amount of business transacted and the amount of Peckham's default, and urges that it did not have actual knowledge of the defalcations. It can not be heard to say after participation in Peckham's wrong to its own substantial advantage that the benefit received was relatively small, or that it was not consciously participating with him.

The facts are stronger against the Bank touching its participation with the fiduciary in the present case than in the case discussed. With frequency when the balance in the commingled account would reach the point where an overdraft was threatened, Peckham would make transfers of Trust funds in amount more than sufficient to cover, and would continue the issuance of checks which the Bank continued to apply as credits on his indebtedness and no obligations created by him for other than Trust purposes. It is not essential to liability on the Bank's part on the theory of participation that it have had actual knowledge, or for it to have colluded with Peckham to despoil the Trust. The record discloses conclusively that the Bank accepted payments to apply on Peckham's personal debts, and that it continued receiving such payments from the proceeds of his check
2198 drawn on his account containing Trust funds which he had commingled with his own.

The legal consequences of such transactions are clearly stated in Steere vs. Stockyards Natl. Bank, 113 Tex. 287, 256 S. W. 586, 258 S. W. 1042, a case upon certified question in which Herbert Graves' Commission Company was trustee for the owners of cattle sold on commission. One of the questions certified was whether knowledge of the bank that a part of the proceeds deposited by Graves in the course of his business as commission merchant was the proceeds of cattle sold for individual shippers, had the effect to place upon the bank the burden of ascertaining for itself the persons to whom the trust funds in fact

belonged, and hence render unauthorized the offsets made by the bank in liquidation of the Commission Company's overdrafts. The Court says:

"We are clearly of the view that the actual knowledge on the part of this bank that the Graves deposit consisted, *in part*, of trust funds placed upon the bank the burden of making inquiry before appropriating any of that deposit in payment of its own overdraft against Graves. If all of the Graves' deposit had belonged to the shippers, within the knowledge of the bank, the latter certainly could not have appropriated any of the funds to its overdraft against Graves. The bank, knowing the deposit contained trust funds, must separate the trust funds in said deposit from the Graves funds therein before it makes an appropriation from the deposit to pay the Graves overdraft. The funds were mixed by
2199 Graves. The bank knew they were mixed. Therefore, under a rule as old as the law itself, the entire deposit will be treated as trust funds except so far as the bank might upon inquiry, be able to distinguish the trust funds in said deposit from those therein belonging to Graves personally. In the case of Central Natl. Bank v. Connecticut Mut. Ins. Co., 104 U. S. 67, the Supreme Court of the United States quotes with approval the following:

'If a man mixes trust funds with his own the whole will be treated as the trust property except so far as he may be able to distinguish what is his own.'

"Before Graves or the bank could appropriate any part of the Graves deposit to the debt of Graves to the bank it was necessary that they take steps to ascertain what part of the Graves deposit belonged to Graves personally. In other words, actual knowledge on the part of the bank that much of the Graves deposit consisted of trust funds was sufficient to put the bank upon inquiry to ascertain just what part so consisted before using any part of it in payment of Graves' overdraft to it."

In the case of Bischoff vs. Yorkville Bank, supra, only two checks, one for $765 and the other for $1,000 were drawn on the account and applied to the debt due the bank. The bank received only $1765 to be applied on executor's debt to it, but was held liable for $12,000 principal, and $3,000 interest. It was held liable for every check drawn on the commingled account after
2200 it received the first payment on its debt, some of which were issued and presented more than 3 years after the first application so made.

The New York Court of Appeals in holding the bank liable says:

"In the present case Poggenburg paid to the defendant, as his creditor, on June 3, 1908, the sum of $765 from his account with the defendant. The finding of the Trial Court, supported by the evidence, is that the account at that time was constituted wholly from the trust funds. At that time and through the transaction the defendant knew that Poggenburg had appropriated $765 of those funds for his private benefit. The presumption that he would not thus violate his duty and lawful right—that he would apply the moneys to their proper purposes under the will—then ceased to exist. There was absolute proof in the possession of the defendant to the contrary. The defendant had no longer the right to assume that in paying the checks of Poggenburg it was paying the executor's moneys to the executor and not to Poggenburg, the individual, or that Poggenburg would use the moneys lawfully. It had knowledge of such facts as would reasonably cause it to think and believe that Poggenburg was using the moneys of the executor for his individual advantage and purposes. Those facts indicated that the payment to it was not an isolated incident; they indicated, rather, that it was within a method or system.
2201 Having such knowledge, it was under the duty to make reasonable inquiry and endeavor to prevent a diversion. Having such knowledge, it was charged

by the law to take the reasonable steps or action essential to keep it from paying to Poggenburg as his own the moneys which were not his and were the executor's, and was bound by the information which it could have obtained if an inquiry on its part had been pushed until the truth had been ascertained. It did nothing of that sort, and by supinely paying, under the facts here, as found, the subsequent checks of Poggenburg, it became a privy to the misapplication. It must now pay the plaintiffs the moneys of the estate which it had and received on and after June 3, 1908."

Bank vs. Claxton, supra, on the point involved by the Bank that a depositor, although holding the money in a fiduciary capacity, "may draw it out of the Bank ad libitum," is distinguishable from the present case in that there the agents were authorized to carry the trust funds in the bank in their names personally. Justice Williams in making the distinction says: "The present case is not one in which the deposit was made to the credit of the agents without authority." Other cases involving the same distinction are: Wagner Trading Co. vs. Battery Park Natl. Bank (N. Y.), 126 N. E. 347; Robbins vs. Passaic National Bank (Md.), 160 Atl. 418, 82 A. L. R. 1368; Underwood, Ltd. vs. Bank of Liverpool (1924), 1 K. B. 775; Chase & Company vs. Norkfork National Bank, 145 N. E. 725, 730; McIntosh vs. Detroit Savings Bank, 225
2202 N. W. 628, Wen Kroy Realty Co. vs. Public Natl. Bank & Trust Co., 183 N. W. 73; Singer Sewing Machine Co. vs. Citizens' Natl. Bank, 168 Atl. 32, 33; Ward vs. City Trust Co., 84 N. E. 585.

It is unnecessary for us to determine whether observance of the provisions of the Uniform Fiduciaries Act would necessitate the application of a different rule, as the Act has not been adopted by the legislature of this State. The rule applied has been established by the Supreme Court, and we recognize it as the better rule. Coleman vs. Bank, 94 Tex. 607, 63 S. W., 867, cited by the Court of Civil Appeals is distinguishable not only on

the ground that the agent there had the right to make the deposits in question, but also upon the ground that the bank did not participate in any misapplication of the trust funds. The cases relied on by counsel for the Bank, holding on the particular facts of those cases that liability can not be predicated upon the crediting of trust funds to the trustee's personal account, are distinguishable for the reason among others that in none of them was the transfer credited after the bank had been guilty of participating with the trustee in a known breach of trust. In the present case the Bank, after being charged with knowledge of Peckham's dishonest dealings, continued to credit Peckham's personal account with checks drawn on the Trust account, and persisted in its course of dealings with respect to the two accounts. Having
2203 incurred the burden of ascertaining whether subsequent expenditures made by the Trustee from the commingled funds were for authorized Trust purposes, it cannot effectively complain of the weight of that burden. Bogert, Trusts and Trustees, Sec. 912, supra, in concluding his discussion of the Yorkville Bank case, which he approves, says:

"On principle it would seem that an honest and diligent bank ought to refuse the tender of trust credit in payment of a personal debt of the trustee, or, if it can reconcile the acceptance of such credit with appropriate standards of ethics, it should at least notify the cestui of the trustee's conduct and refuse to carry the account further. If it is willing to go on transacting business with a representative known to be dishonest and is not willing to warn the cestui, it should bear the heavy burden of seeing to the honesty of his future acts."

The same thought is expressed by the Supreme Court in the Adoue & Lobit case in the statement that the Bank, "with knowledge of the trust character of the funds," having permitted "a diversion thereof and aided in appropriation of same to the trustee's personal debt," * * * "is and of right should be held liable."

Peckham as Trustee drew checks upon the commingled account aggregating $53,740.89 purporting to be in payment of oil royalties and oil properties purchased by the Trust. The transactions represented by this group of checks are those in which Peckham bought properties on his own account and later sold them to the Trust,
2204 sometimes at a profit to himself. Another group of checks issued by Peckham aggregates $55,-219.44. He caused voucher notations and trust book entries to show the application of these funds to be for the purchase and improvement of a town-lot enterprise known as Marlboro. A clear statement of the transactions of Peckham, Harrell and the Bank relating to this enterprise is made in the minority opinion of the Court of Civil Appeals. 74 S. W. (2) pp. 677-8. Peckham's deed purporting to convey the Marlborough property to the Trust was not delivered by Scannell, and title to the property was never accepted by the Trust.

Peckham received credit for checks aggregating $11,-250.00 which carried voucher statements that the proceeds were to be applied to the Trust notes to the Bank. They were not so applied, and the Trust received nothing for them. Items in the total sum of $12,048.00 were received by Peckham from the sale of Trust royalties, but the books showed the sale prices to be still receivable from the purchasers. Six thousand dollars was received also by Peckham through the Security National Bank item. All of these improper withdrawals and misapplications of Trust funds took place after the Bank had participated with Peckham by accepting Trust funds on his personal debts to the Bank and after Harrell was charged with knowledge thereof. Checks aggregating $10,055.42 were drawn by Scannell after Peckham's death, and as his successor. It was not necessary, in order to establish participation of the Bank and Harrell
2205 with Peckham, to show actual knowledge on their part of Peckham's purposes as they relate to the various transactions in question. Steere vs. Stockyards Natl. Bank, supra. The Bank and Harrell had

constructive knowledge of Peckham's dishonesty, and inquiry pursued with reasonable diligence would have disclosed the facts showing Peckham's lack of authority and breaches of trust. First Natl. Bank of Houston vs. Weiner, 253 S. W. 615; Miller & Co. vs. Hobdy, 169 S. W. 96; Carder vs. McPherson, 152 Fed. 951; Essex Natl. Bank vs. Hurley, 16 Fed. (2) 427.

Finally Scannell repudiated the transactions here in question, including those in which he himself acted as Peckham's successor, and concerning which he claims he had not at that time discovered either the true facts, or the rights of the stockholders. The cross action against the Bank and Harrell in which the repudiations are set up and tenders are made, was filed less than two years after Peckham's death.

It is the position of defendants in error with respect to Scannell's repudiation of Peckham's transactions, including those had with Harrell, that he had so conducted himself with respect thereto that he had no right to repudiate them, and that if he was not in position to personally complain, then the stockholders cannot assert their rights through him as their representative. Defendants in error also urge as defenses, ratification and limitation.

It must be borne in mind that as to the stock-
2206 holders the cause of action is not asserted by Scannell on his behalf and for all others similarly situated. Scannell, as Trustee, is asserting the facts set up in the cross action and in defense of the Bank's suit, as the representative of the stockholders, and in so doing acts in a representative capacity. As showing the distinction between the individual right of a trustee and his representative right in respect to his right to sue for the cestui que trustent, it is stated in Perry on Trusts (7 ed.) Sec. 122, Vol. 1, p. 178, that "the trustee also may recover the funds notwithstanding his own fraud." It was not only his right but his duty to assert the cross action for the trust estate to recover property disposed of in fraud of the trust. It is settled that one receiv-

ing property with knowledge that it is subject to a trust and that it had been transferred in violation of the trustee's duty, takes it subject to the rights not only of the cestui que trust, but also of the trustee, to reclaim possession. Mansfield vs. Wardlow, 91 S. W. 859. Also, a defrauded cestui que trust may recover property purchased with his funds, even though the agreement between the trustee and the purchaser was an illegal one and even though the trustee stands in a position where he cannot complain of the transaction. Chaves vs. Myer, 13 N. Mex. 368, 85 Pac. 233.

Defendants in error urge also that Peckham's acts were within his authority as Trustee, under his broad grant of powers as such.

2207 The sole source of Peckham's powers as Trustee and Scannell's powers as his successor, is the Declaration of Trust above referred to. Defendants in error, while not admitting they owed any duty of making inquiry as to the terms of the Declaration, invoke the broad powers conferred by it upon the trustee, and contend that Peckham as trustee, in view thereof, had in effect all of the powers of an owner in handling the Trust property. It is recognized generally that those who deal with a trustee, and have notice that he is only a trustee, are bound in law to know he is acting beyond his authority when he handles and uses the trust property as an owner and for his special benefit. Shaw vs. Spencer, 100 Mass. 382. Such use is contrary to the principle underlying the existence of trust relationship. Bogert, Trusts and Trustees, Vol. 1, Sec. 1, defines such relationship as "one in which one principal holds a property interest subject to an equitable obligation to keep or use that interest for another." It is stated in Reece vs. Medlock, 27 Tex. 120, that "it is a well settled principal that, when an agency is created and conferred by written instrument, the nature and extent of the authority given by it must be ascertained from the instrument itself." While it is true that under the terms of the Declaration the trustee is granted broad powers in respect to the

management of the business authorized to be transacted by him as trustee, we cannot agree that he is
2208 empowered to handle the property as an owner, or that he was privileged to do with it as he pleased. In Wen Kroy Realty Co. vs. Public Natl. Bank, 183 N. E. 73, the president of the corporation had unrestricted authority to manage its business and did not by any by-law or resolution of its Board expressly restrict that broad power. The Court held that the power conferred did not include the power to indorse corporation checks for personal purposes, and that where a bank accepts a check indorsed by the president, it is put upon inquiry to ascertain his actual authority to make the indorsement under the circumstances, saying:

"A power to act for another, however general its terms, or wide its scope, presupposes integrity and faithfulness in its exercise, and cannot be enlarged by implication or construction to the justification of a diversion to the use of the agent of moneys or property subject to the agency." statement of the "corrections and explanations" follows:

"The further statement that Scannell 'had charge of the office' of the Royalty Company in Wichita Falls is withdrawn. It is manifest from other portions of the opinion that Geo. W. Peckham was sole trustee of the company with supreme control of its affairs and the office of the company in Wichita Falls, and also its books and records kept by him in that office. Scannell was employed by Peckham as secretary and treasurer of the company, and, as testified to by him, he 'kept books, records, and did detail work for the Wichita Royalty Company'
2209 under supervision and direction of Peckham. Scannell was not a stockholder during that period, and Peckham's appointment of him as secretary and treasurer was therefore in violation of the provisions of the declaration of trust under which Peckham acted as trustee. And Scannell further testified that all he did was under Peckham's instructions, one of which was that

the books and records were to be kept in a safe, and that no one was to be allowed to see them. The statement that Scannell 'also made monthly reports to the 1,300 stockholders' was incorrect, since, according to his uncontroverted testimony, reports to the stockholders were made annually and not monthly, and were prepared by Peckham and mailed out by Scannell under his direction.

"Complaint is made of this further statement in the opinion:

"'Nor have appellants represented any complaint in behalf of the stockholders that the failure of Scannell to sooner seek recovery of damages claimed in the cross-action was prompted by fraud on his part and participated in by the bank.'

"That statement had reference to the cross action filed by Scannell for and in behalf of the Royalty Company, which, in the opinion of the writer, did not seem to embody any charge of fraud on his own part in his failure sooner to seek a recovery of damages claimed in the cross action. However, counsel for appellants have cited his testimony that, After George W. Peckham's death, he
2210 joined with W. H. Peckham, brother of George W. Peckham and with Harrell's assent thereto, in an agreement to conceal from the stockholders the fraud theretofore practiced by George W. Peckham, to the end that his estate might not suffer from the demands of the stockholders for damages based thereon."

The testimony is not undisputed in the particular that there was an "agreement to conceal," which is unimportant in so far as the question of ratification and limitation are concerned. It is undisputed that both Peckham and Scannell concealed the facts from the stockholders, and that the stockholders had no knowledge thereof. The stockholders were without knowledge or notice of any fact that concealment was practiced upon them, and they

were under no duty to check the conduct of Peckham, the Bank and Harrell. As expressed by Chief Justice Hickham, (now Commissioner) in reversing and rendering judgment for a principal in Security State Bank vs. Burton, (Tex Civ. App.), 10 S. W. (2) 201, 204, writ of error refused:

"No such duty (to check up the conduct of an agent) rested upon appellant. It had the right to rely implicitly upon the good faith of its agent, and owed no duty whatever to determine whether such agent was truly representing it."

Certainly this is true where, as here, there is no evidence that the cestuis had knowledge of any fact calculated to arouse inquiry on their part.

The protection the stockholders had a right to rely upon under the trust plan of operation agreed upon by them, however inadequate it may have been, was
2211 that the trustee would carry the property in his name as trustee, and that he would carry on the business of the Trust within the limits prescribed in the Declaration of Trust. The inadequacy of such protection in no way operated to relax or modify the duties imposed by law upon the Bank and its officers in dealing with Peckham.

Discussions of the questions touching the Trust's liability to the Bank on the notes sued upon has been postponed to this point, as the facts relating to the execution and indorsement thereof respectively can now be viewed in a clearer perspective.

The indorsement of the $14,596.00 note grew out of the Marlboro enterprise. Scannell was not authorized to represent and bind the estate in matters arising out of that venture; nor was there any consideration for his indorsement as Trustee. The Trust is therefore not liable, and the Trial Court should have instructed a verdict as to this note in favor of the Trust.

The $22,000.00 note was a renewal of the $15,000.00 note, dated January 18, 1926, and the $25,000.00 note dated March 1, 1926, less payments. Peckham deposited the proceeds of the loan in the Trust account, but the evidence raises the issues as to whether they were subsequently used respectively for other than Trust purposes. The Trust's liability upon the renewal note depends therefore upon a fact determination of whether the original loans respectively were made for the benefit of Peckham personally.

There has been no audit of Peckham's dealings, individually and as Trustee, with the Bank and Harrell, as reflected by the Trust account, his personal account and the books of the Trust, in the light of the governing principles herein pointed out. While these principles as applied tc the facts are determinative as a matter of law of most of the questions presented, their application can be more satisfactorily made through an audit of the books and account referred to, due to the fact that numerous items are involved and a vast amount of checking and cross-checking of items and amounts is necessary in order to arrive at the amount of the liabilities respectively of the Bank and Harrell to the Trust.

2212

It is apparent from what has been stated that the amount of the Bank's liability is the difference between the total amount of the deposits for which Peckham's personal account received credit after he began commingling Trust funds with his own on October 8, 1925, and the total amount of withdrawals therefrom which the Bank may show were used for authorized Trust purposes. It conclusively appears that the Bank is not entitled to credit for expenditures out of the commingled account for the purchase and improvement of Marlboro, or those transactions wherein Peckham acted in the dual role of buying as Trustee from himself personally.

It is necessary that the amount of Harrell's liability be differently ascertained, as he did not become obligated

to the Trust as depository for its funds. The
2213 Trust's primary contention as set forth in its brief in the Court of Civil Appeals was that Harrell was indebted to the Trust for $15,088.00 as a matter of law, and $84,587.23 as a question of fact. We have concluded that the Trust's subsequent contention that Harrell's liability arises by virtue of his actionable participation with Peckham in those transactions in which the latter continued to issue his checks upon the commingled account after knowledge of Peckham's infidelity was imputed to him, is correct. In January and March, respectively, 1926, Harrell cashed Peckham's check aggregating $15,088.00 in payment of a pre-existing indebtedness originating in Peckham's purchase from Harrell and Basham of the Stephens royalty. Such payments were made by means of checks issued by Peckham upon a personal account in which Harrell knew both Trust and personal funds were being deposited. Knowledge was thereby visited upon him of the trust nature of what he received in payment of Peckham's indebtedness. Harrell testified that "it was all alike" to him "whether the Trust account was carried in the name of Wichita Royalty Company or G. W. Peckham", but inquiry pursued with reasonable diligence by Harrell in connection with Peckham's subsequent dealings in which Harrell was also interested, including Marlboro, would have disclosed that Peckham was using Trust funds in purchasing an interest in, and in improving, that Addition. The measure of Harrell's liability to the
Trust is therefore determined as a matter of
2214 law, on the basis of his actionable participation with Peckham. The contention of defendants in error that the case was tried upon the theory that the Bank became an immediate converter upon the depositing of the Trust funds to Peckham's personal account, if granted, loses its force in view of the necessity for another trial. The amount of Harrell's liability to the Trust is the aggregate amount of trust funds paid

out on the transactions in question in which he was personally interested and which Scannell subsequently repudiated with tenders as pleaded and shown.

No basis exists for a judgment in favor of the Bank over against Harrell as prayed, as the Bank through Harrell as vice-president had the same character of notice of Peckham's unauthorized and dishonest dealings as was imputed to Harrell himself.

It is obvious that the Trust is entitled to judgment against the administrator of G. W. Peckham's estate as such for the aggregate amount of Trust funds used by Peckham for other than Trust purposes.

The remainder of the Trial Court's judgment being predicated upon its instructed verdict in favor of the Bank, it is necessary that such remainder be set aside, except that part thereof which discharges from liability Flora A. Kemp and Chas. I. Francis, executors under the will of J. A. Kemp, deceased. These executors were not impleaded by the Trust, which alleged Kemp was guilty of no wrong; but they were impleaded by Harrell and the Bank, who sought judgment over
2215 against them in the event of judgment in favor of the Trust in its cross action. We find no evidence of any actions between Peckham, as Trustee, and Kemp, in which Kemp was personally interested; nor have the Bank and Harrell pointed out any testimony calculated to arouse inquiry on Kemp's part as to Peckham's infidelity as Trustee. That part of the judgment directing that the executors of Kemp's will go hence without day should be affirmed, with costs incurred by them.

No demand having been made against either the Bank or Harrell prior to the time of filing the Trust's cross action, interest should be allowed on the respective recoveries from that date.

In view of another trial it is here pointed out that the various sums referred to herein are not stated as finalities but are used for convenience in identifying the transactions to which they relate.

We find it unnecessary, in view of the principles stated, to pass upon any other assignments.

The judgments of the Trial Court and Court of Civil Appeals on both the direct and cross actions are reversed and the case is remanded for another trial in accordance with instructions given herein, except that part thereof which finds in favor of the executors of Kemp's estate. As to said executors the part of the judgment denying recovery against them on Harrell's and the Bank's plea over, is affirmed, and judgment is here rendered that they recover their costs against the Bank and Harrell.

2216 (Signed) W. M. TAYLOR,
WMT/W Commissioner.

Opinion Adopted by the Supreme Court Dec. 11, 1935.

In The Supreme Court of Texas.

From Wichita County, Second District.

Wichita Royalty Company, et al., Plaintiffs In Error,
vs. No. 6800.
The City National Bank of Wichita Falls, et al., Defendants In Error.

On Motion For Rehearing.

It is an open question upon another trial of the case within the principles of law stated in the opinion on original hearing, whether the Bank first acquired knowledge of Peckham's dishonesty on November 17, 1925. This statement is made in view of the Bank's contention in its motion for rehearing with respect to the nature of the items constituting in the aggregate the $5500 transferred by Peckham from the Trust account into his personal account on October 8, 1925. It is undisputed from the facts disclosed by the present record that such a transfer was made by him, and there is no evidence that a transfer of funds out of the Trust account into

his personal account was made at an earlier date. Nor is it contradicted in the evidence that the payment made by him on November 17, 1925, to be credited
2217 on his personal indebtedness to the Bank, was made from his personal account which then contained funds transferred thereto from the Trust Account on October 8, 1925. It is not intended by anything said in the original opinion to foreclose upon another trial the question of whether the items contended by the Bank to constitute the $5500 were used for authorized Trust purposes; or to foreclose any purely fact finding that may be made from the evidence that may be adduced upon another trial. The suggestion in the original opinion that an audit should be made for use upon another trial, and the statement that the various sums therein referred to were not stated as finalities, were indicative of such intention. The statement perhaps should have included a reference to the various dates as well as sums. It is apparent from the undisputed evidence upon the former trial as to the date when Peckham began his system of transferring funds from the Trust account to his personal account, that the suggested audit should take at its beginning point a date not later than October 8, 1925. The principal aim of the original opinion is to set forth the principles of law applicable upon another trial.

In view of the contention with respect to the character of the items claimed by the Bank to make up the $5500 in question, reference is made to the discussion in the opinion on original hearing of the terms of the declaration of trust, beginning 89 S. W. (2d) 404, at (7, 8); and also to the principles of law set
2218 forth in the excerpt quoted from Steere v. Stockyards National Bank, 113 Tex. 287, 256 S. W. 586, 590, 258 S. W. 1042, cited in the original opinion, supra, p. 401.

The motion for rehearing is overruled

(Signed) W. M. TAYLOR.

WMT W

Opinion Adopted by the Supreme Court Commissioner April 8, 1936.

I, S. A. Philquist, Clerk of the Supreme Court of Texas, do hereby certify that the foregoing twenty-seven pages contain true and correct copies of the original opinion and opinion on motion for rehearing of the Supreme Court of Texas in Cause No. 6800, Wichita Royalty Company, et al., Plaintiffs in Error, vs. The City National Bank of Wichita Falls, et al., from Wichita County, Second District, as the same appear of record now on file in this office.

In Testimony Whereof, witness my hand and the seal of The Supreme Court of Texas, at Austin, This the 13th day of May, A. D, 1936.

(Seal) S. A. PHILQUIST, Clerk,
By J. P. RYRNE,
Deputy.

(Here followed order of the Supreme Court, which appears as Defendant's Exhibit 192 in this record.)

2219 Mr. Rogers:

I offer in evidence the voucher upon trust check No. 427, being marked "Defendant's Exhibit I" for the purpose of showing that it is entirely in original typing and not a carbon copy.

DEFENDANT'S EXHIBIT I.

Property No. 81, to purchase of one-fourth of the royalty on the east thirty acres of a seventy-one acre tract of land out of the D. Milligan Survey, Callahan County, Texas, $2,500.00.

Property No. 82, to purchase of one-eighth of royalty on east half section 4, B. B. B. & C. R. R. Co. Survey,

Certificate 682, 320 acres Archer and Young County, Texas, $1500.00. Additional interest. (Description not given) to be accepted upon approval of title, $1500.00.

2220 Mr. Rogers:

I also offer in evidence the following instrument marked "Defendant's Exhibit J":

DEFENDANT'S EXHIBIT J.

The Archer County Abstract Company,

E. H. Trigg, Manager,

Archer City, Texas.

Royalty Assignment.

C. W. Murchison, E. R. Fain, Chas P. McGaha, Trustees for Murchison & Fain Oil Co. to G. W. Peckham.

Dated: June 20th, 1925.

Filed: June 25th, 1925.

Recorded: Vol. 103, page 438.

Deed Records of Archer County, Texas.

The State of Texas,
County of Wichita.

Know all Men by These Presents: That We, C. W. Murchison, E. R. Fain and Chas. P. McGaha, trustees of Murchison & Fain Oil Company, a Trust Estate, of Wichita County, Texas, for and in consideration of the sum of Ten & No/100 Dollars ($10.00) cash in hand paid, by G. W. Peckham, hereinafter called grantee, the receipt of which is hereby acknowledged, have granted,

sold, conveyed, assigned and delivered, and by these presents do grant, sell, convey, assign and deliver unto the said grantee, an undivided 1/128 interest in and to all of the oil, gas and other mineral in and under, and that may be produced from the following described land, situated in Archer County, Texas, to-wit:

2221 The south Sixty acres of the West eighty acres of Block No. 22, Anderson South Pasture Subdivision. The North twenty-five acres of the east fifty acres of the west one hundred acres Block 19, Anderson South Pasture. The east sixty acres of the west one hundred sixty acres of Block No. 19, Anderson South Pasture subdivision.

Together with the right of ingress and egress at all times for the purpose of mining, drilling and exploring said land for oil, gas and other minerals, and removing the same therefrom.

Said land being now under an oil and gas lease executed in favor of Cullum & Associates, 60 ac; Prairie Oil & Gas Co. 40 ac; Weldon 25 ac; and Constantin 20 acres. It is understood and agreed that this sale is made subject to the terms of said lease, but covers and includes one-sixteenth of all of the oil royalty and gas rental of royalty due and to be paid under the terms of said lease.

To Have And to Hold the above described property, together with all and singular, the rights and appurtenances thereto in anywise belonging, unto the said grantee herein, his heirs and assigns forever; and grantors do hereby bind themselves, their successors and assigns, to warrant and forever defend, all and singular, the said premises, unto the said grantee herein, his heirs and assigns, against every person whomsoever

lawfully claiming or to claim the same or any part thereof.

2222 Witness our hands this the 20th day of June, 1925.

C. W. MURCHISON,
E. R. FAIN,
CHAS. P. McGAHA,
Trustees for Fain-McGaha Oil Co.

Witnesses: .....

$6.00 Revenue Stamps attached and canceled.

The State of Texas,
County of Wichita.

Before me, the undersigned authority, a Notary Public in and for said County and State, on this day personally appeared C. W. Murchison, E. R. Fain and Chas. P. McGaha, trustees of Murchison & Fain Oil Company, a Trust Estate, known to me to be the persons and officers whose name is subscribed to the foregoing instrument, and acknowledged to me that the same was the act of the said Murchison & Fain Oil Company, a Trust Estate, and that they executed the same as the act of such Company, for the purposes and consideration therein expressed, and in the capacity therein stated.

Given under my hand and seal of office, this 20th day of June, A. D, 1925.

(Seal) PAULINE ENGLISH,
Notary Public, Wichita County, Texas.

The State of Texas,
County of Archer.

We, The Archer County Abstract Company, do hereby certify that the above and foregoing is a true and correct copy of royalty Assignment from C. W. Murchi-
2223 son, et al to G. W. Peckham, as the same appears of record in Vol. 103, page 438, of the deed records of Archer County, Texas.

To Certify Which Witness Our Hand And Seal, On this the 26th day of February, A. D, 1937.

THE ARCHER COUNTY
ABSTRACT COMPANY.

(Seal) By E. H. TRIGG,
Manager.

Filed 9th day of April, 1937.

GEO. W. PARKER,
Clerk.
By ELIZABETH HALL,
Deputy.

2224 (The following is a transcript of the proceedings had upon the hearing on the matter of the confirmation of sale of assets of the Wichita Royalty Company, this hearing being held at Dallas, Texas, before Honorable William H. Atwell, United States District Judge on June 10, 1937.)

Leslie Humphrey appearing for the confirmation. Guy Rogers, opposed.

Mr. Rogers:

If Your Honor please, carrying forward the objection made at the time of the entry of judgment, the Wichita Royalty Company objects to the confirmation of this sale, and has filed a pleading, which I will now read to Your Honor:

(Whereupon the objections were read.)

Mr. Humphrey:

Of course, Your Honor, the stockholders of the old bank, at a stocknolders meeting, directed the sale of these assets—I can speak for most of them, I think about 7,500 shares out of a total of 10,000, were present, and they asked that the sale be confirmed.

E. A. DEATON, being first duly sworn, examined in chief by Mr. Humphrey, testified as follows:

My name is E. A. Deaton. I was appointed special master by the Court to conduct this sale. I am also liquidating agent of the City National Bank of
2225 Wichita Falls, and have had charge of the liquidation for several years. I have furnished the Court a schedule of the assets of the old bank attached to my report, and that is a true and correct schedule of the assets, with the book value shown as distinguished from the cash value. I advertised this property as shown by my report, for four weeks, and I sold all of the assets at the Courthouse door in Wichita Falls on the first of June, 1937. The purchaser of the assets was the City National Bank in Wichita Falls, there were no other bids, they made a bid of $184,000.00, which is the total amount of the debt that the old bank owed to the City National Bank in Wichita Falls. There are no other debts owing by the old bank except this contingent liability, and possibly one or two other small contingent liabilities. In other words, the old bank will be fully liquidated, as far as this is concerned, from this transaction, as far as its records and books show.

I am familiar with these assets, and in my judgment the price paid was a fair and adequate price. The assets consisted largely of unsatisfactory notes, outside of the stock of the new bank. I have listed here the stock of the new bank, $107,500.00. Its value is par—book value—just as we have it set up. They have made arrangements, on the confirmation, to replace this stock at par. It also has $5,500.00 in cash, then chips and whetstones, various sorts, $104,000.00, and notes o. $307,000.00.

2226 Cross Examination.

By Mr. Rogers:

I do not know the exact date that the old bank acquired the stock in the new bank, but it was recently,

since the taking of the testimony in the main case. When the main case was tried on its merits, the old bank did not then own any stock in the new bank. I will give you the circumstances, the stock was pledged to the old bank on the note of the City National Bank, the stock was owned by the City National Bank and we sold it under that pledge and acquired title to it.

There has not been any substantial change in the value of the assets of the old bank for the past several months. I think they are worth as much now as they were when the evidence was taken before the examiner. There has been no assessments on the stock of the old bank.

This $307,000.00 of notes that are listed, are not readily collectable, some of them are because they are secured; I see here two notes of E. P. Bomar, secured by real estate are collectable, but they are for only five hundred dollars. I see one here on George A. Alexander, $2,788.00, he is an oil man in Wichita and that is not collectable at this time. Also a note here of J. M. Baker, $8,500.00, he is a real estate man, those notes can be worked out in time. Mr. Basham, formerly connected with the City National Bank owes $14,000.00, and that is not collectable. Also A. H. Britain is a lawyer in Wichita Falls, he owes $2,000.00 and has suf-
2227 fered financial reverses and that is not collectable, it will be a workout on that note. That is true generally with most of these notes. With most of these notes, it may be that over a period of time we may be able to collect a portion of them, or a substantial part. I see here a note of J. M. Golson, of Lubbock, he is a merchant, and we have a judgment against him, also another note of $5,500.00 against an oil man, that is about the same situation. Most of these notes, the makers are not able to pay. We have been pressing the collections, and making every effort to collect them, and kept them renewed so they will be collectable and probably paid some day. Most of these men are men of integrity and pay their debts when they are able to.

These notes are the leftovers of notes of the bank when it had an eight or ten million dollar loans.

I do not have any reason to believe that any more could be gotten for these assets than at this sale.

The Court:

I do not see any reason why the sale should not be confirmed, and you may draw an order.

Mr. Rogers:

We wish an exception to the confirmation of the sale.

2228 It is agreed by and between counsel for the respective parties hereto that the above and foregoing is a full, true and correct statement in narrative form of the evidence adduced and proceedings had upon the hearing of the above numbered and entitled matter, and that the same shall be filed as a part of the record herein.

GUY ROGERS,
Atty. for Wichita Royalty Co. & E. E. Scannell.
T. R. BOONE,
Atty. for J. T. Harrell.
ARCH DAWSON,
(For Peckham).
Attorneys for Defendant.
LESLIE HUMPHREY,
TARLTON MORROW,
Attorneys for Plaintiff.
LESLIE HUMPHREY, &
TARLTON MORROW,
Attys. for Interpleaded Defendants.

The above and foregoing having been agreed to by counsel, is hereby approved and ordered filed as a part of the record herein. July 3, 1937.

WM. H. ATWELL,
Judge.

2228a Statement of the evidence filed in U. S. Dist. Court July 3, 1937.

(Title Omitted.)

Being pages 351 to 1921 inclusive sent herewith in four separate volumes, to be Included in the Transcript at this place.

2229 OPINION OF THE COURT.

Filed in U. S. Dist. Court April 9, 1937.

(Title Omitted.)

This case has its birth in a trust executed in 1920 by R. R. Robertson, and filed in Wichita County on August 27, 1920. He resigned as trustee on January 2nd, 1923. G. W. Peckham was appointed by the District Judge of the Thirtieth Judicial District of Texas and continued until his death on the 7th of November, 1929. E. E. Scannell succeeded Peckham on November 12, 1929, receiving his appointment in the same manner. Scannell had been connected with the operations of the trust since Roberton's regime.

The general purpose of the trust was to buy and sell oil and gas royalties and other oil and gas properties. It provided for a million shares at a dollar each. About thirteen hundred people throughout the United States and distant from Wichita Falls became stockholders. The trust provided that there should be no liability as to the

stockholder and that he should have no right to do anything for the trust nor was he entitled to any property, but only to a division of profits and at the expiration of the term of the trust, which was to last for twenty years, to a division of principal and profits. It was to be managed by one trustee. All investments were to be in the name of the trustee as trustee, and all titles were to be so taken. The trustee was given authority to acquire any property necessary or proper for the purpose of the trust. Any demand on account of the operation and business of the trust was to be paid.
2230 The trustee was liable only for wilful and corrupt breach of trust and not for any honest error of judgment.

The complainant instituted a suit in 1930 in the State Court against the trust and its trustee, Scannell. It declared upon a $22,000.00 note, two $5,000.00 notes and a $23,500.00 note. Liens were asserted for their security. In February 1931, the trust and Scannell admitted Scannell's execution of the $22,000.00 note, but pleaded certain apologies therefor and claimed that it was executed upon certain representations and assurances of J. T. Harrell who was at that time an officer of the bank.

In February, 1931, the trust answered more fully and impleaded J. T. Harrell and made cross complaint against the bank for benefits alleged to have been received by that institution from trustee Peckham out of the moneys of the trust.

On February 25th, 1932, judgment was rendered for the plaintiff for the $22,000.00, also for $14,596.00 and against the defendant's cross action, and for the executors of the estate of J. A. Kemp, who was claimed to have been a silent partner of Harrell and Peckham, and who was dead.

On May 14, 1936, the cause having reached the Supreme Court of Texas where it was reversed, the mandate was received.

On June 18, 1936, the trust and Scannell, the latter as trustee, and as one of the thirteen hundred
2231 stockholders, amended and sought such remedies against the old bank, it having gone into liquidation in March, 1933, and its successor, the liquidating agent of the old bank, the stockholders of the old and the new banks, and the estate of Peckham, that application to remove, as an effort to wind up the affairs of a national bank, to this Court, was made, where, later on, a motion to remand was overruled. See, ... F., (s) P. .....

The cause was then repleaded and the Court having been advised by both parties that a commissioner would be advisable to take testimony, an order was accordingly made and T. C. Irby was so appointed.

Upon the trial something over 3,100 pages of testimony were introduced, filling nineteen volumes, as taken from ten witnesses. There were many exhibits, among which are 221 checks, of which only 72 appear to bear on the matters. In this record there are many repetitions and considerable confusion in the offering of the testimony. I mean by confusion, the same witness would be recalled at different periods and take up different transactions or treat the same transactions that had been developed by some other witness so that it has required considerable labor on the part of counsel and Court in sifting out the exact truth of the story. The pages for this story come out of the past and some of them were written fourteen years ago and most of them more than ten years ago. The chief actor, G. W. Peck-
2232 ham, is dead.

The transactions known as the Grimshaw Royalty, the Wilson Royalty, the White lease, the Routon Royalty, the South Anderson ranch, the Millner oil payment, the Curtis Lane property the Callahan Royalty, the Porter ranch, the Anderson ranch in Ellis County, Oklahoma, the Hartley county item, the Marlborough addition, and a Studebaker car, are the principal battle grounds. With reference to these Carson

and Lambert for the bank, and Wallace for the respondents, aided volubly by trustee Scannell, offered the bases for what must be taken as the proper solution. There are some aids to Carson and Lambert in Harrell and Bomar and Dickson's testimony.

Some of these properties the Court finds to have been taken in the name of Peckham. As to such as were so taken there were minute memoranda furnished to and inscribed on the records of the trust and in most, if not all instances, reported to the stockholders in periodical communications from the trustee. Such communications are shown in the record with the exception of one in June of 1926, which was the date of the first report after the acquisition of the Marlborough property. If it be conceded, which the Court does not find, that there was any profit to Peckham on either of the above transactions, except Marlborough, which
2233 is treated later, and one other small item, then and in that event the Court finds that the complainant in this case was not a party thereto and is not chargeable therewith. The trust made money for the stockholders, who have been paid something like 118% on their investment.

The Court further finds that after Peckham's death the succeeding trustee, Scannell, and Peckham's brother, who was the administrator of the deceased Peckham, agreed, after Scannell had discovered an alleged shortage of $19,000.00, that that amount could be paid out of Peckham's $100,000.00 life insurance and that nothing would be said about it. While this concealment was effective, and, observed, the Texas state statute requiring the filing and presentment of claims in the Probate Court having charge of the deceased estate, within ninety days, was probably tolled, but when the claim for that amount was filed in that estate the agreement to conceal was abrogated. After the disallowance of that claim by the Probate Court no proceedings were taken against Peckham's estate until this cross action was filed in 1936. The Texas statute and the decisions thereunder with refer-

ence to such matters bars the right to enter Court under circumstances of that sort, and, in truth, announce that the claim no longer exists—it is extinguished by such failure to act within the time. Art. 3522, Tex.,
2234 R. S., 1928. Therefore, whatever amounts may have been due by Peckham to the trust by reason of such transactions are not recoverable in this action, and this includes a profit of $4,000.00 alleged to have been made by Peckham in the Marlborough transaction.

Peckham kept his account in the old bank. That bank was also the depository for the trust. Peckham was an active operator in the oil fields and in the real estate world. His deposits in his individual account during the time of his trusteeship were more than a million and six hundred thousand dollars, and included hundreds of transactions. Under the trust he could have kept in his private account the funds belonging to the trust. There are no legal inhibitions to a trustee, empowered as here, to use himself as a conduit for either property or funds from strangers to the trust. Such a course is unwise and subjects each transaction to the critical scrutiny, not to say suspicion, of interested parties, particularly the Court. It must be borne in mind that in this trust the trustee had the widest powers, and was responsible not only for dishonesty and not for errors of judgment. He was bounden to ultimately fix the title to that which was required for the trust in himself as trustee. It would hardly be judicial to suggest that the time for such fixing is not itself fixed, but we may fairly say that the raising of eyebrows could be pre-
2235 vented by doing this upon the acquisition of the property.

The Court has been unable to find any dishonest transaction by trustee Peckham. The Court has found the payment of some of his indebtedness to the old bank out of funds of the trust. When a transaction of that sort takes place I think the bank had the burden of making inquiry. It is unnecessary to review the richness

of the authorities upon the question, but I do not agree that they are marshaled in accordance with the prevalent rule in the National Courts in the opinion of the Supreme Court in the first trial of the cause. The case of American Surety Company vs. Waggoner National Bank, from the Fifth Circuit, 83 F. (2) 99, which affirmed 13 F. (s) 295, seems to bear upon the questions here. Attention is also called to Empire Trust Company v. Cahan, 274 U. S. 473.

The opinion, in re Wichita Royalty v. City National Bank, 89 S. W. (2) 394, uses Bischoff v. Yorkville Bank, 213 N. Y. 106. Almost simultaneous with the decision in 89 S. W. (2) 394, was the decision of Quanah Acme & Pacific v. Wichita State Bank & Trust Co., 89 S. W. (2) 385. But the Supreme Court, in the Quanah case, 93 S. W. (2) 701, seems to have discarded the negligence rule as to the liability of depositories and to have grounded such liability upon the question of good faith.

But regardless of those cases the consensus of
2236 judicial opinion at the present time, in the absence of bad faith, seems to rest upon the facts which disclose business as ordinarily conducted. In other words, the bank was not charged with any duty to require Peckham to disclose where the funds came from that were in his personal account, nor to require him to account to it for the funds that were in the trust account, in the absence of any definite information as to illegal or improper deposits or withdrawals.

The trust puts its moneys and deposits at the disposition of the trustee Peckham. They were in his power. No one else had anything to do with them. No one else had any say about them. If he drew them out he could do so as he saw fit. Such notice as the bank had was notice only of this relation between the parties. The bank in permitting the trustee to draw out trust funds was only doing what the trust itself declared the trustee had a right to do and the bank was not bound to ask even if the deposit had been earmarked as a trust. The method or form of withdrawals is immaterial. They

could have been drawn out on the check of the trustee. All that need to be known under this branch of the law—considered reasonably and carefully—is whether the bank got the benefit of trust funds. If it did it is liable to respond, and the fullness of the rule just mentioned does not apply.

In Exhibit B to Wallace's testimony are fif-
2237 teen items, from June 22nd, 1923, to June 12, 1929, which he claims were payments to the bank out of trust funds on Peckham's personal debts. Another item of approximately $2,550.00 is also claimed. These total $13,281.59. Of these, four relate to salary checks which were manifestly his. The other items, save and except the sum of $1,807.11, which witness Lambert concedes and which witness Carson does not question, seem to be wrongly so placed. In weighing Carson and Lambert against Wallace I have taken into consideration the fact that Carson has gone into exhaustive detail—having spent many months in the examination, as has also Lambert. Wallace spent a much shorter time and seems to have been mislead, at any rate, to some extent, by confusion resulting from his determination to charge to Peckham, as improper withdrawals, approximately $30,000.00 in salary. There are conditions when salary will be denied a trustee. I do not find those conditions present in this case. I have been doubtful about the $2,550.00. When one is doubtful, and as doubtful as the maze of facts in this case causes, I believe the trust should be given the benefit of it in so far as it concerns a payment out of funds to the depository bank by the trustee on his own debt. That makes a total of $4,357.11, which I find to have been so improperly paid. This sum must bear, in justice, the same rate of interest that the bank
2238 was charging on the loan, to-wit, eight percentum, and it should begun to run January 1, 1926. This date is rather optional but it seems to be fair to all parties. The sum to be deducted from the $22,000.00, claimed by the complainant, is, therefore:

$8,278.50, which leaves a balance due it, on that note, of $13,721.50.

When the case went to the higher State Courts from the first trial trustee Scannell, and the trust, made certain claims against the bank by reason of the Marlborough transactions. That investment was one apparently outside of the sort of properties that the declaration authorized the trustee to deal in. But he dealt in good faith, insofar as showing such dealing in the records of the trust is concerned. It was not a good faith dealing insofar as he, himself, made a profit of $4,000.00, is concerned. Scannell claimed at that trial that a deed had been given to the trust by Peckham but that Peckham had cautioned him to keep it quiet and under his testimony it appeared not to have been a legal deliver.

Upon this trial that claim of Scannell's is thoroughly dissipated. The deed was not only discovered in the records of the trust, but a letter dated on April 10th, 1926, to the trust, signed by Peckham, upon the face of which were certain figures made by Scannell, at the time, evidently, clearly shows that there was nothing unfair or improper or concealed, save and except the highly wrong profit already mentioned. Under
2239 these newly discovered, and for a long time, concealed facts, there was a legal delivery of that deed.

There are other reasons that the record discloses for placing reliance where I have placed it.

The case of Connecticut v. Commercial National Bank, 87 F. (2) 968 by this Circuit, lays the correct rule as to the results that must follow a transaction between an unfaithful agent, as its binding effect upon his principal, and a third party. If the principal elects to retain results to the detriment of the third party justice requires that he take the transaction with its actual infirmities. This record does not satisfactorily disclose to the open mind any knowledge upon Harrell's part, the officer of the bank, in the Marlborough transaction,

or any other transaction for that matter, which imputes knowledge to Harrell which under this rule would be charged to his principal, the complainant in this case.

Under this rule of the bank's bounden duty to take notice when it receives benefit, even though Harrell be acquit of any impropriety, there was a direct benefit to the bank out of the $25,000.00 loan to the trust. It is unnecessary to recite the immediate details that followed the placing of that credit. They are sufficient to take from the complainant any right to recover here. It has not discharged the burden that rests upon it to make out its case by a preponderance of the testimony.

I do not mean to say it would figure out in exact
2240 pennies, but I do mean to say that the denial of its right to recover is proper. Likewise, there is no other merit in the cross action. The burden that rested upon the trust to show the chancellor has, likewise, been undischarged.

I have already indicated the record is unpardonably extended, and it seems to me appropriate that the decree should go that neither the complainant nor the respondent take anything, and that the costs shall be equally divided between the bank and the trust without costs as to the Peckham estate, Harrell, or any of the other natural persons.

WM. H. ATWELL,
United States District Judge.

Wichita Falls, Texas, April 9, 1937.

2241 FINAL JUDGMENT.

Filed and Entered April 9, 1937.

In the District Court of the United States for the Northern District of Texas, Wichita Falls Division, March Term, A. D. 1937.

City National Bank of Wichita Falls,
vs. No. 358 In Equity
Wichita Royalty Company, et al.

April 9, A. D. 1937.

This Day this cause came on to be heard at this term, and was argued by counsel; and thereupon, upon consideration thereof, it was Ordered, Adjudged, and Decreed as follows, viz:

1. That The City National Bank of Wichita Falls take nothing against either Wichita Royalty Company, E. E. Scannell, individually and as trustee, Charles L. Black, Guy Rogers, individually and as trustee under the will of L. B. Rogers, deceased, W. H. Peckham, administrator of the Estate of G. W. Peckham, deceased, Humble Oil & Refining Company, Continental Oil Company, or The Texas Company, and that all relief sought by said The City National Bank of Wichita Falls, Texas, be and the same is hereby denied, and the Complainant's bill be dismissed.

2. That Wichita Royalty Company and E. E. Scannell, trustee, take nothing against either The City National Bank of Wichita Falls, The City National Bank in Wichita Falls, J. T. Harrell, individually and as trustee, E. Deaton, Liquidating Agent, W. H. Peckham, administrator of the estate of G. W. Peckham, deceased, Texas Investment Company, Hazel D. Peckham, William Peckham, George Peckham, Robert Peckham, L. H. Cullum,

Leslie Humphrey, Jack Jeffus, Oral Jones, Frank Kell, Joe Kell, J. J. Perkins, C. W. Snider, or F. P.
2242 Timberlake, and said cross complainants' bill of complaint be dismissed, except that the title to and possession of that land and those premises situated in Wheeler County, Texas, and being all that interest in the royalties and mineral rights in Wheeler and Gray Counties, Texas, standing in the name of G. W. Peckham, is hereby divested out of W. H. Peckham, administrator of the estate of G. W. Peckham, deceased, Hazel Peckham, William Peckham, George Peckham, and Robert Peckham, surviving children of G. W. Peckham, deceased, and invested in the Wichita Royalty Company and the cloud upon the title thereof is hereby removed.

3. That Wichita Royalty Company do have and recover of and from The Texas Company, Continental Oil Company, and Humble Oil & Refining Company the title to and possession of the proceeds of oil suspended by such respective parties to the account of the Wichita Royalty Company.

4. It is further ordered that the cloud cast upon the title of the properties and assets of the City National Bank of Wichita Falls, as well as the assets and properties of the City National Bank in Wichita Falls and the assets and properties of the Texas Investment Company, a corporation, by virtue of the filing and recording of the notice lis pendens of the cross bill of the Wichita Royalty Company in this cause, be removed.

5. It appearing to the Court that the City National Bank of Wichita Falls is in voluntary liquidation and is indebted to the City National Bank in Wichita Falls, a national banking association, in the sum of $184,000, as security for which there has been given a pledge of all the assets of the City National Bank of Wichita Falls, said pledge being given to J. T. Harrell, Trustee,

and that there are no other debts shown to exist against the City National Bank of Wichita Falls and that the affairs of said City National Bank of Wichita
2243 Falls should be completely wound up, administered, and the proceeds therefrom distributed to the creditors of said bank; the validity of said debt and pledge as between said banks is hereby established; E. A. Deaton is hereby appointed Special Master to sell, dispose of, and convey the assets of the City National Bank of Wichita Falls, after having given notice thereof in the time and manner as required by the rules of this Court and the statutes relating thereto, but conveyance of said assets by said Master shall be made only after report of said sale to this Court and a confirmation thereof.

It is further ordered that said Special Master give notice of said sale by making publication thereof in some newspaper published in the City of Wichita Falls, Texas, once a week for four consecutive weeks next prior to the date of sale, and that said sale shall be made at the Courthouse door in Wichita County, Texas, on the first Tuesday in any month after the publication aforesaid; that said sale shall be at public sale between the hours of 10:00 o'clock a. m. and 4:00 o'clock p. m. on said date and that the cross complainant, City National Bank in Wichita Falls shall be entitled to credit its debt against the purchase price bid for said property, and that said Special Master shall within five days from said sale report the same to this Court for confirmation. The Court retains jurisdiction to make such other and further orders herein, relating to the distribution of the fund and the winding up of the affairs of said bank, as may be necessary or proper in the premises.

6. The costs of this proceeding, including the costs of the Examiner, is equally divided between the complainant, City National Bank of Wichita Falls, and the cross complainant, Wichita Royalty Company and E. E.

Scannell, its Trustee, and that all other parties
2244 recover of said complainant and the cross complainant the costs incurred.

7. All appropriate process shall seasonably issue for the proper enforcement of this decree.

8. The complainant, City National Bank of Wichita Falls, and E. A. Deaton, Liquidating Agent, and the cross complainant, Wichita Royalty Company and E. E. Scannell, Trustee, except to this decree and said exceptions are hereby allowed and entered, and it is so ordered.

WM. H. ATWELL,
United States District Judge.

REPORT OF E. A. DEATON, SPECIAL COMMISSIONER.

Filed in U. S. Dist. Court June 5, 1937.

2245 (Title Omitted.)

To the Honorable Wm. H. Atwell, Judge of Said Court:

Now Comes E. A. Deaton, Special Commissioner appointed in the above cause to effect a sale of the assets of the City National Bank of Wichita Falls, Texas, and respectfully reports to the Court as follows, to wit:

I.

That pursuant to the decree of this Court of April 9, A. D. 1937, he caused to be published in the Wichita Daily Times, a newspaper of general circulation published in Wichita Falls, Wichita County, Texas, a notice of the sale as ordered by this Court, which sale was to be held on the first Tuesday in June, A. D. 1937, being the first

day of said month, and caused said notice to be published once a week in said newspaper, to wit, the Wichita Daily Times, a newspaper published as aforesaid, for four successive weeks prior to the date of said sale, the publication of the notice of said sale being on the following dates: May 8, May 15, May 22, and May 30, A. D. 1937.

II.

That pursuant to the decree of this Court of April 9, A. D. 1937, and pursuant to the notice of sale published thereunder, the undersigned, as Special Commissioner, did offer for sale in Wichita County, Texas, at
2246 the Courthouse door of Wichita Falls, Wichita County, Texas, beginning at 10:15 o'clock A. M., on June 1, A. D. 1937, all and singular the assets of the City National Bank of Wichita Falls, Texas, (now in liquidation) a detailed statement and list of same being attached to this report, marked Exhibit "A," and made a part hereof, together with all other assets, whether therein described or not, in anywise belonging to or pertaining to the City National Bank of Wichita Falls, Texas, (now in liquidation).

III.

That thereupon there was bid for said properties by the City National Bank in Wichita Falls the sum of $184,000.00 for the whole of said properties, which was the highest, best, and only bid submitted for said properties, and that the total amount of the bid for all and singular all of said properties was said sum of $184,000.00 and the sale was made at the Courthouse door of Wichita County, Texas, on June 1, A. D. 1937, at 10:15 o'clock A. M. on said date, and that said properties were thereupon struck off to the City National Bank in Wichita Falls, the highest and best bidder therefor, subject to the confirmation of the Court of said sale.

IV.

That the expense and costs of the proceeding, including the expense of advertising the sale but excluding any fees of the Special Commissioner in making the sale, is the sum of $9.50.

V.

That the City National Bank in Wichita Falls, pursuant to said judgment, being entitled to credit its debt against the purchase price bid on said properties, credited said bid thereon.

2247 A copy of the notice, as published, is attached hereto and made a part hereof.

Whereof, your Commissioner prays that upon a hearing of this report the same be accepted and that the sale be confirmed, and that he be directed to make a conveyance of the respective properties to the City National Bank in Wichita Falls, and for such other orders as the Court may direct.

E. A. DEATON,
Special Commissioner.

Sworn to and Subscribed Before Me, this 5th day of June, A. D. 1937.

MRS. GERTRUDE TURNER,
(Seal) Notary Public, Wichita County, Texas.

EXHIBIT "A".

Statement.

City National Bank of Wichita Falls,
May 29th, 1937.

Assets.

Cash in bank	$ 5,506.97
Loans and Discounts (list attached)	307,509.03
Real Estate (list attached)	104,557.76
Stocks— 100 sh. Bowers Oil Company	1.00
1075 sh. City Nat'l Bank in W. F.	107,500.00
2/384th Royalty inst.—155 ac. Gray Co. Texas	3,628.79
Notes sold under re-purchase agreement	2,744.36
Deficit	(655,296.45)
	$1,186,744.36

Liabilities.

Capital Stock	$1,000,000.00
Deficiency Notes	184,000.00
Notes sold under repurchase agreement	2,744.36
	$1,186,744.36

Loans and Discounts.

City National Bank of Wichita Falls.
May 29th, 1937.

Name	Amount		Maturity Date
Alexander, Geo. A., Jr.	$ 2,788.86		5- 5-37
Aulsbrook, C. J.	98.50		7- 7-33
Baber, J. M.	8,500.00		12- 1-35
Basham, C. E.	12,801.96		11-28-35
Basham, C. E.	1,232.82	$14,034.78	1- 4-37
Bomar, E. T.	250.00		2- 6-38
Bomar, E. T.	250.00	500.00	2- 6-39
Britain, A. H.	1,400.00		12-27-35
Britain, A. H.	600.00	2,000.00	6-27-36
Brown, Henry	8,539.82		12- 1-34
Burnett, I. E.	1,844.57		1- 1-33
Bynum, E. B.	362.00		7- 1-36
Carson, H. H.	100.00		3-10-37
Cearley, B. W.	193.96		10- 1-33
Chafin, E. V.	97.50		12- 1-35
Clark, S. H.	334.87		Mo. p'mts.

1938

Cochran, E. B.	188.20		2-11-36	
Cone, W. M.	324.48		7-20-36	
Cooke, M. M.	418.35		7-12-35	
Davis, A. L.	19.00		7-27-36	
Dickey, L. H.	441.48		Mo. Pmts.	
Evans, L. A.	591.80		7- 1-33	
Evans, L. A.	298.90		7- 3-33	End. C. E. Basham
Evans, L. A.	116.00		7-29-33	
Evans, L. A.	250.00		7-31-33	End. C. E. Basham
Evans, L. A.	130.08		9-30-33	End. C. E. Basham
Evans, L. A.	641.47		10- 4-33	
Evans, L. A.	7,201.64		10- 7-33	End. C. E. Basham
Evans, L. A.	250.00		10-30-33	End. C. E. Basham
Evans, L. A.	106.42		11-29-33	End. C. E. Basham
Evans, L. A.	4,344.79		12-29-34	End. C. E. Basham
Evans, L. A.	347.52	14,278.62	12-29-34	End. C. E. Basham
Ferrell, Wilson	78.95		12-12-33	
Floyd, W. E.	507.35		8-11-35	
G. I. Oil Company	3,101.74		7-27-35	
Gates Hereford Farm	604.00		12-28-34	
Geyer, Harry	24.00		8- 2-35	
Gholson, J. M.	4,609.09		6-10-35	
Grantham, Cleo W.	43.15		6-30-33	

Name	Amount		Maturity Date	
Green, W. J.	6,500.00		3- 9-41	
Grisham, W. J.	5,500.00		3- 8-37	
H. & H. Fuel Oil Company	348.82		5- 2-37	
Hampton, John W.	1,536.00		4-12-37	
Harding, E. P.	1,451.45		9-17-31	Judgment
Harris, Theodore	250.00		6-30-34	
Herndon, C. E.	500.00		8- 1-37	
Hines, Harry	547.00		2-27-37	
Hoffman, F. J.	600.00		12-31-37	
Holcomb, W. W.	91.30		6-21-33	
Huffines, W. C., assumed by C. E. Naylor	45.00		Out	
Jensen, Walter	102.50		5-18-33	
Kellow, S. R.	65.20		10- 7-34	
Kemp Estate	13,344.00		6-27-37	
Kemp Estate	8,752.16		6-27-37	
Kemp Estate	29,197.30		7-15-37	
Kemp Estate	66,405.61	117,699.07	7-15-37	
Kertz, L.	1,961.43		12-26-36	
King, Roy H.	1,396.35		6-19-35	
Kovarik, Jan	357.97		6-30-33	

Lee, J. F.	92.65		3- 1-34	
Logan, R. A.	10.00		9-14-36	
Marshall, Mrs. N. H.	155.85		1-30-33	Judgment
Mask, B. B.	143.50		9-18-36	
McCullough, R. W. H.	337.10		3- 7-34	Judgment
McKenzie, T. F.	624.10		8- 6-35	
McKenzie, T. F.	6,840.00	7,464.10	12- 1-36	
Miller Drug Store	945.00		8-25-32	End. Harrell & Cowling
Miller, W. E.	32.75		1-14-35	
Moss, T. J.	695.57		9- 3-34	
Mullins, R. L.	3,068.14		4-10-35	End. C. E. Basham
Mullins, R. L.	3,068.14		4-10-35	End. C. E. Basham
Mullins, R. L.	288.52	6,424.80	4-10-35	End. C. E. Basham
Myers, C. C.	79.00		6-22-35	
Myers, C. C.	300.00	379.00	1- 1-38	
Mytinger, J. C. Realty Company	1,200.00		10-15-38	
Nolen, Chas. W.	26.60		5-25-37	
North Texas Finance Corp.	1,399.55		5-23-35	
Norwood, E. W.	800.00		2- 5-38	
Paul Tex Oil Company	1,066.78		5- 9-32	End. J. M. Dodson
Riveer, M. M.	146.80		6-30-32	
Robertson, W. L.	100.00		7- 1-37	
Robertson, W. L.	100.00		8- 1-37	

Name	Amount		Maturity Date
Robertson, W. L.	100.00		9- 1-37
Robertson, W. L.	100.00		10- 1-37
Robertson, W. L.	100.00		11- 1-37
Robertson, W. L.	100.00		12- 1-37
Robertson, W. L.	100.00		1- 1-38
Robertson, W. L.	100.00		2- 1-38
Robertson, W. L.	100.00		3- 1-38
Robertson, W. L.	100.00		4- 1-38
Robertson, W. L.	100.00		5- 1-38
Robertson, W. L.	11,176.32	12,276.32	6- 1-38
Robinson, James R., Jr.	504.79		8- 1-34
Robinson, James R., Jr.	3,996.67		8- 1-34
Robinson, James R., Jr.	94.60		3- 6-35
Robinson, James R., Jr.	86.90	4,682.96	3- 4-36
Saye, Frank	50.00		8-21-36
Schambs, Edward A., Jr.	68.63		10-14-33
Smith Estate, C. C.	995.70		9-24-35
Staber, Fred	2638.56		4-23-35
Stone, Jerome S.	11,402.38		6- 1-35
Stone, Jerome S.	20,400.00	31,802.38	6- 1-35
Stone, L. T.	200.00		2- 9-36

Texas Investment Company	421.28		10- 9-35	
Texas Investment Company	1,478.51	1,899.79	10-25-36	
Thornberry, H. T.	965.00		10- 5-35	
Thornberry, H. T.	2,947.20	3,912.20	11-15-35	
Turner, W. E.	277.30		2- 1-34	End. W. J. Mangum
Wehba, Katha	100.40		12-15-35	
Welch & Richardson	500.00		1-25-35	
Wichita Royalty Company	22,365.93		8-25-30	
Williams, Sam	122.70		4-17-33	
Woodall, D. B.	910.75		7-28-37	
Yancey, J. S.	2,400.00		3- 3-38	
Total	$307,509.03			

2251

Real Estate Owned by City National Bank of Wichita Falls, May ...., 1937.

Description	Book Value	Prior Lien
Outer Blk. #25, Burkburnett, Texas, acquired from T. A. Zimmerman 1917. Owned in fee and producing approximately $275.00 oil royalty per year ..... $	1.00	None
320 acrs. land, no improvements, Andrews Co., Texas, acquired from Eugene Sherrod 1929, 1/2 under lease to Gulf at 50c per acre, lease expiring 1938	1.00	$624.00
Lot 14, Blk. 3, Hillcrest Add. to Plainview, Texas, acquired from E. E. Squires 1920	200.00	None
An und. 1/4 int. 10 acrs. with 4 room frame house, Iowa Park road, acquired from J. M. Baber in 1920, remaining 3/4 int. formerly owned by C. E. Basham, now owned by Wag. Nat. Bank, Vernon. Several hundred dollars delinquent taxes due	1.00	Taxes
50 acrs. on old Burk road, formerly refining site, acquired from Southwest Ref. Co. 1933	14,771.30	None
143 acrs. of land, some improvements, Kit Carson Co. Colo. acquired from L. Steinberger 1933 (Power Bank Company Collateral)	3,200.00	None

Description	Book Value	Prior Lien
36 acrs. unimproved mesquite land, Wichita Co. about 8 miles on Seymour road, acquired from W. S. Curlee 1933	1,020.00	None
10 acs. unimproved land about 5 miles from W. F. on old Iowa Park road, acquired from H. G. Helgerson, 1933	1,000.00	Taxes
Vacant lot 2607 Kemp Blvd. W. F., acquired from J. C. Clower 1929	100.00	None
An undivided ¼ int. in lots 6 & 7, Blk. 182, Orig. Cor. 10th & Ohio (¾ int. owned by Kemp Estate) Our part of rent about $75.00 per year	5,000.00	None
124.61 acrs. unimproved land about 3 miles east W. F. on Petrolia Road	10,673.82	Taxes
Blks. 9, 10, 14, 15, 16 and 21, in Unit 1 Petrolia Gdns., all unimproved	3,600.00	None
S½ Blks. 17 & 18, Petrolia Gdns. Add. with 5 rm. frame house in fair condition	2,400.00	None
5 acs. unimproved land Tyson Subdiv. East of W. F.	500.00	None
Vacant lot on Oriole St. W. F.	50.00	None
1417—24th St. W. F. 50 ft. lot with 4 rm. frame house in bad condition	1,500.00	None
1309 Lamar St. W. F., 70 ft. lot with old 6 rm. house in bad condition, R. R. Trackage in rear	6,511.66	None
4 vacant lots on Kentucky St., W. F.	400.00	None
4—25 ft. lots in Blk. 90 O. T. acquired from Hubert Harrison (Delinquent taxes more than value of lots)	1.00	None

Description	Book Value	Prior Lien
6986 acs. of grass land Dallum Co. no improvements except fencing and 2 wells, acquired from S. G. Helm	50,154.00	29,000.00
An undiv. ½ int. 160 acs. unimproved land Archer Co. about 1 mile NW of Holliday, acquired from Otto Stehlik ...	3,750.00	Fed. Land Bank & Taxes
80 acs. unimproved public Sch. land Hudspeth Co., Texas, acquired from H. W. Powell 1934	1.00	State of Texas & Taxes
35.9 acs. unimproved land about 1 mile N. of W. F. and 60 acs. unimproved land about 5 miles W. of W. F. acquired from Fritz Hendrich	1.00	None
	$104,836.78	
Less 1/10th int. 200 acrs. near Burkburnett (our int. being in Fee and Mineral, with approx. $50.00 royalty per yr.)	279.02	None
	$104,557.76	$29,624.00

WICHITA ROYALTY COMPANY'S OBJECTIONS TO REPORT OF SPECIAL COMMISSIONER.

Filed in U. S. Dist. Court June 10, 1937.

2253 (Title Omitted.)

Wichita Royalty Company and E. E. Scannell, Trustee, herein called Cross Complainants, protest the confirmation sought by complainant bank of the special commis-

sioner's report of sale, and for objection thereto would show:

1. Cross complainants are without information as to the true value of the assets of complainant bank which are reported to have been sold by the special commissioner to the City National Bank in Wichita Falls, but allege that the record in this cause discloses the testimony of the president of both banks to be upon the principal hearing that the assets of the old bank were sufficient if permitted orderly to work out, to discharge all of the liabilities of the old bank including the judgment sought against the said bank by cross complainants.

2. Cross complainants say that if the assets sold were of but the value bid therefor at public sale, and if the City National Bank in Wichita Falls as an alleged creditor of the old bank be permitted to receive said properties in cancellation and discharge of said alleged indebtedness, and if complainants be finally successful in obtaining judgment herein as prayed for, that the confirmation of sale would result in further preferring the City National Bank in Wichita Falls as a creditor of the old bank to the irreparable injury of cross complainants.

3. Cross complainants further say that the stock holders of the old bank and new bank are not identical
2254 and if cross complainants ultimately prevailed in obtaining the judgment sought and are relegated to the enforcement thereof to the super added liability of the stock holders, that the stock holders of the old bank themselves would be prejudiced to the benefit of the stock holders in the new bank. In this connection it is shown that the stock holders in the new bank are for the most part active officers and directors of the two banks, whereas the stock holders of the bank includes as well many other individuals.

4. Cross complainants would further show that the old bank has been in liquidation for more than four years; that a final judgment will be rendered herein within approximately six months from this date, and no one would be injured should the Court refuse to confirm the sale, or should the Court require as a condition of confirmation the payment of $184,000.00 in cash rather than as a credit, or should the Court make the confirmation subject to the affirmance of the judgment herein upon appeal.

Wherefore cross complainants pray that the sale above mentioned be not confirmed and in the alternative that if it be confirmed, it be confirmed only upon the payment of the bid in cash; and in the further alternative that the confirmation be subject to and defeated unless the judgment heretofore rendered herein be affirmed on an appeal and for general equitable relief.

KILGORE & ROGERS,
Attorneys for Cross-Complainants.
By GUY ROGERS.

ORDER CONFIRMING REPORT OF E. A. DEATON, SPECIAL MASTER.

2255 Filed and entered June 10, 1937.

(Title Omitted.)

On This the 10th day of June, A. D. 1937, came on to be heard the report of E. A. Deaton, Special Master, filed herein on the 5th day of June, A. D. 1937, of the sale of the assets of the City National Bank of Wichita Falls, Texas, a national banking association, the plaintiff, City National Bank of Wichita Falls, appearing by Leslie Humphrey, its attorney, the defendant Wichita Royalty Company appearing by Guy Rogers, its attorney, and E. A.

Deaton, the Special Master, appearing in person, and said report being heard, together with the evidence thereon, and it appearing to the Court that due and proper notice of the sale ordered by this Court in the decree of April 9, A. D. 1937, was given by the Special Master and that the sale was conducted at Wichita Falls, Texas, on the first day of June, A. D. 1937, being the first Tuesday of said month, by the Special Master in accordance with the decree of this Court of April 9, A. D. 1937, and that the sale was in all things fairly made and that the bid accepted and recommended by the Special Master in his report is the highest and best bid made for said properties offered by the Special Master, pursuant to the Court's decree herein, and that the report of sale should in all things be confirmed:

It Is, Therefore, Ordered, Adjudged, and Decreed by the Court that the sale as made by the Special Master of all of the properties set forth and described in the list marked Exhibit "A" attached to said report, together with all other assets, whether therein described or not, belonging to the City National Bank of Wichita Falls, be in all things approved and confirmed and that the title to said properties is hereby confirmed and vested in the City National Bank in Wichita Falls, free and clear of all rights, claims, and liens whatsoever asserted by the Wichita Royalty Company, defendant herein, and the Special Master is directed forthwith to execute and deliver to the City National Bank in Wichita Falls a deed, conveyance, and bill of sale to said properties free and forever discharged of any right, claim, or interest of the defendant Wichita Royalty Company and/or E. E. Scannell, its Trustee.

2256

It appearing that the City National Bank in Wichita Falls was the successful bidder for said properties and bid the sum of $184,000.00, the amount of its bid being credited in accordance with the decree of this Court of April 9, A. D. 1937, upon the indebtedness owing to said

City National Bank in Wichita Falls by the City National Bank of Wichita Falls, said credit is allowed and confirmed.

It Is Further Ordered that the City National Bank of Wichita Falls, plaintiff herein, be and is hereby directed, through its proper officers, to join in the conveyance by the Special Master of the assets aforesaid.

To the action of the Court, the defendants, Wichita Royalty Company and E. E. Scannell, its Trustee, in open Court duly excepted, which exception is allowed & entered.

WM. H. ATWELL,
United States District Judge.

PETITION FOR THE ALLOWANCE OF AN APPEAL

2257 Filed July 3, 1937.

(Title Omitted.)

To said Honorable Court:

The cross-complainants Wichita Royalty Company, a Trust Estate, and E. E. Scannell, Trustee, conceiving themselves aggrieved by the order and decree made and entered on the 9th day of April, A. D. 1937, in the above entitled and numbered cause, particularly by that portion thereof wherein cross-complainants were denied recovery against the City National Bank of Wichita Falls, The City National Bank in Wichita Falls, J. T. Harrell, individually and as trustee, E. A. Deaton, Liquidating Agent, W. H. Peckham, Administrator of the Estate of G. W. Peckham, deceased, Texas Investment Company, Hazel D. Peckham, William Peckham, George Peckham, Robert Peckham, L. H. Cullum, Leslie Humphrey, Jack Jeffus, Oral Jones, Frank Kell, Joe Kell, J. J. Perkins, C.

W. Snider, and F. P. Timberlake, and cross-complainants' Bill of Complaint dismissed, and wherein Lis Pendens Notice filed by cross-complainants was removed as a cloud upon the title and properties of the City National Bank of Wichita Falls and the Texas Investment
2258 Company, and wherein an indebtedness alleged to be due the City National Bank in Wichita Falls by the City National Bank of Wichita Falls was adjudicated to be $184,000.00, with foreclosure of an alleged lien upon the assets of the City National Bank of Wichita Falls, and directing the sale thereof, as well as the Court's confirmation of the sale made pursuant to said judgment, and wherein half of all costs incurred in the proceeding, including the costs of the Examiner, were taxed against cross-complainants, and likewise feeling aggrieved by the Court's overruling an original and an amended Plea to the Jurisdiction and Motion to Remand, do hereby appeal therefrom to the Circuit Court of Appeals for the Fifth Circuit for the reasons specified in the Assignment of Errors which is filed herewith, and they pray that this appeal may be allowed and that an order allowing the appeal be duly signed and that a citation be issued, directed to the above named parties against whom these cross-complainants sought relief, commanding them to appear before the Circuit Court of Appeals for the Fifth Circuit to do and receive what may appertain to justice to be done in the premises; and further that a transcript of the record, proceedings and papers upon which said orders and decree were made be duly authenticated and be sent to the Circuit Court of Appeals for the Fifth Circuit. Cross-complainants further pray that a proper order be made by the Court relating to the security required of them on this appeal.

KILGORE & ROGERS,
By GUY ROGERS,
Solicitors for said Cross-Complainants.

2259 ASSIGNMENT OF ERRORS.

Filed July 3, 1937.

(Title Omitted.)

Come now Wichita Royalty Company and E. E. Scannell, Trustee, cross-complainants in the above entitled and numbered cause, and in connection with their Petition for the Allowance of an Appeal in this cause assign the following errors which said cross-complainants (appellants on this appeal) aver occurred in the trial of this cause and in the rendition of the final decree herein and on which they rely to reverse said decree and the orders entered of record in said cause:

I.

The District Court erred in retaining jurisdiction of this cause and in failing and refusing to remand the cause to the State Court from which it was removed.

II.

The District Court erred in overruling cross-complainants' Original Motion to Remand the Cause to the District Court of Wichita County, Texas, from which it was removed.

2260 III.

The District Court erred in overruling the Amended Motion to Remand the Cause to the District Court of Wichita County, Texas, from which it was removed.

IV.

The District Court erred in rendering the final decree herein in that the pleadings and the record herein show that jurisdiction of the cause is exclusively vested in the

District Court of Wichita County, Texas, and that the cause was not removable to the District Court of the United States.

V.

The District Court erred in holding that cross complainants' Third Amended Answer and Cross-Action was in effect a suit to wind up the affairs of a failed national bank.

VI.

The District Court erred in holding that the cross-complainants' Third Amended Original Answer and Cross Action presented a controversy arising under the laws of the United States and for that reason removable from the State Court.

2261

VII.

The District Court erred in denying cross-complainants the recovery sought by them on their cross-bill against the City National Bank of Wichita Falls, referred to in the record as the old bank, and in dismissing their said cross-bill of complaint in this: Cross-complainants' suit was for the recovery of the deposit balance of Wichita Royalty Company, a trust estate, in said bank, and to recover losses suffered by said trust estate on account of the said bank's participation with one Peckham, a former trustee of the Wichita Royalty Company, in breaches of trust, and for an accounting; and it was proven upon the trial of this cause that said bank was a depositary of funds belonging to said trust estate and of the funds belonging to said trustee, Peckham, and that with knowledge and notice of his wrongful purpose, it permitted the said trustee to transfer large sums of money from the trust estate to his personal account and to disburse them for unauthorized trust purposes, some to pay the bank his

personal debts and some for the purpose of paying officers of the bank, including its president, his individual debts to said officers, and the remainder for unauthorized trust purposes; and it was further proven that the said bank had full knowledge and notice that said transfers were unauthorized and had full knowledge and notice of said improper and unauthorized disbursement of trust funds and of said breaches of trust and participated with the said trustee in his breaches of trust and was in part the beneficiary of said breaches of trust; and that upon an accounting the said cross-complainants were and are entitled to a recovery against said bank on account of its participation in said breaches of trust amounting to $110,225.88, with interest.

2262 VIII.

The District Court erred in denying cross-complainants the recovery sought by them on their cross-bill against J. T. Harrell and in dismissing their said cross-bill of complaint in this: Cross-complainants' suit was for the recovery of a deposit balance of the Wichita Royalty Company, a trust estate, in the City National Bank of Wichita Falls, referred to in the record as the old bank, and to recover losses suffered by said trust estate on account of said bank's participation with Peckham, a former trustee of Wichita Royalty Company, in breaches of trust, and for an accounting; and to recover from J. T. Harrell on account of his participation with the said trustee in said breaches of trust; and it was proven upon the trial of this cause that the said bank was a depositary of trust funds belonging to the Wichita Royalty Company and of the personal funds of said Peckham, trustee, and that it permitted the said trustee to transfer large sums of money from the trust account to his personal account and to disburse them for unauthorized trust purposes, some to pay the bank his personal debts, some for the purpose of paying officers of the bank, including the said Harrell, his individual debts to said officers, and the re-

mainder for unauthorized trust purposes; and it was further proven that said Harrell represented the said bank in said transactions and had full knowledge and notice of said improper and unauthorized disbursements of said trust funds and participated with the trustee in his said breaches of trust and was in large part a beneficiary of the said breaches of trust, and that upon an accounting the said cross-complainants were entitled to a recovery against said Harrell for the losses of said trust estate suffered on account of said breaches of trust amounting to $110,225.88, with interest.

2263

IX.

The District Court erred in failing and refusing to render judgment in favor of the cross-complainants against the City National Bank of Wichita Falls, referred to as the old bank, in the sum of $110,225.88, with interest, representing losses suffered by the Wichita Royalty Company, a trust estate, on account of breaches of trust of Peckham, the former trustee, in which the said bank with full knowledge and notice participated.

X.

The District Court erred in failing and refusing to render judgment in favor of the cross complainants against J. T. Harrell in the sum of $110,225.88, with interest, representing losses suffered by the Wichita Royalty Company, a trust estate, on account of breaches of trust of Peckham, the former trustee, in which the said Harrell with full knowledge and notice participated.

XI.

The District Court erred in denying cross-complainants recovery against the City National Bank in Wichita Falls, referred to in the record as the new bank, and in dis-

missing cross-complainants' bill of interpleader against said bank in this: It was alleged and proved that cross-complainants were creditors of the City National Bank of Wichita Falls, referred to in the record as the old bank, and that in March, 1933, said old bank became insolvent and ceased to do business, and thereafter transferred to the new bank all of its assets; that the transfer of said assets and the contract made between the two banks at the time resulted in the new bank's receiving all of said assets in the nature of trust funds for the benefit of cross-complainants and other creditors of the old bank and in preferring the new bank as a creditor under a contract made at a time when the old bank was insolvent.

2264 XII.

The District Court erred in denying Cross Complainants recovery against J. T. Harrell, L. H. Cullum, Leslie Humphrey, Jack Jeffus, Oral Jones, Frank Kell, Joe Kell, J. J. Perkins, C. W. Snider and F. P. Timberlake, and in dismissing Cross Complainants' Bill against said parties in this: It was alleged and proved that Cross Complainants were creditors of the City National Bank of Wichita Falls, referred to in the Record as the old bank, and that said individuals were the directors of said corporation, which Bank was in a state of contemplated insolvency from and after October, 1931, closing its doors in March, 1933, and said directors became and in said period of time were trustees and the assets of said old bank in their possession and under their control constituted a trust fund for the benefit of Cross Complainants and other creditors of the old bank, and said directors disposed of all of the assets so held by them in trust for the benefit of creditors, receiving substantial portions thereof themselves and transferring a substantial remainder thereof to the City National Bank in Wichita Falls, which they organized, transferring the remaining assets of the old bank to J. T. Harrell, trustee, and giving a pretended lien to the

new bank upon the remaining assets of the old, said parties becoming personally preferred and liable to account to the creditors, including Cross Complainants, for all of the assets of said corporation.

XIII.

The Court erred in denying Cross Complainants recovery against Texas Investment Company and in dismissing Cross Complainants' Bill against the same in that it was alleged and proved that said corporation was dissolved, its assets having been transferred to the City National Bank of Wichita Falls, which Bank was
2265 debtor to Cross Complainants, with the record title to said assets of said old bank standing in the corporate name of Texas Investment Company.

XIV.

The Court erred in denying Cross Complainants recovery against W. H. Peckham, Administrator of the Estate of G. W. Peckham, deceased, Hazel D. Peckham, William Peckham, George Peckham and Robert Peckham, heirs of G. W. Peckham, deceased, in that it affirmatively appeared that G. W. Peckham, while trustee of Wichita Royalty Company misappropriated $110,225.88 with liability therefor arising, with interest thereon.

XV.

The Court erred in rendering judgment in favor of the City National Bank in Wichita Falls against the City National Bank of Wichita Falls for $184,000.00, with foreclosure of a lien upon said bank's assets and causing the same to be sold and confirming the sale thereof to the new bank, in that it affirmatively appears from the pleading and proof that at the time of the origin of the alleged

indebtedness the City National Bank of Wichita Falls was a closed institution, insolvent, whose directors formed a new bank to take over its assets, and said new bank, as transferee of said assets of the insolvent bank acquired no title thereto as against the creditors of said insolvent bank, and said new bank took said assets charged with a trust for the ratable benefit of all the creditors of the insolvent bank. The Court erred in giving the new bank judgment against the old bank and in directing and confirming the sale to the new bank of the assets of the old.

2266 XVI.

The Court erred in rendering judgment against Cross Complainants for one-half of the costs of the proceeding, including the cost of the Examiner.

XVII.

The Court erred in admitting in evidence a deed executed by G. W. Peckham to Wichita Royalty Company describing the property known as a half interest in Marlborough Addition, in that said deed was never delivered. It remained under the control of the grantor during his lifetime. It involved a transaction not authorized by the Declaration of Trust. It involved a transaction between G. W. Peckham, the individual, and G. W. Peckham, the trustee, and the dual dealing of G. W. Peckham, while in a fiduciary capacity, without knowledge by or notice to the beneficiaries, said properties conveyed by G. W. Peckham in his lifetime to Texas Investment Company without notice or knowledge of said unrecorded from G. W. Peckham, the individual, to his trust, the consideration set up by G. W. Peckham for himself against himself as trustee being in profit to himself.

XVIII.

The Court erred in admitting in evidence deeds to properties known as the Grimshaw Royalty, the Wilson

Royalty, the White lease, the Routon Lease, the South Anderson Ranch property, Millner oil payment, the Curtis Lane Property, the Callahan royalty, the Porter Ranch, the Anderson Ranch, and the Hartley County property, and in finding that the trust was bound with respect thereto by the transactions had by G. W. Peckham, the individual, with G. W. Peckham, the trustee, without notice to or knowledge by the stockholders, it
2267 affirmatively appearing that each transaction involved a breach of trust unknown to, not ratified by or acquiesced in by the stockholders, with repudiations and tenders made and prayer for a recovery of the moneys received by G. W. Peckham. It was error to hold that either of these transactions was a proper account for trust funds belonging to Wichita Royalty Company. The District Court erred in its implied finding and holding that G. W. Peckham, the individual, might, with his own funds and in his own name, acquire property as his own and of a fluctuating value, and might at some subsequent time determine by himself, convey the same to his trust and enter upon the books of the trust a charge therefor in an amount which he determined and thus constitute the use of such funds a proper account therefor.

XXIX.

The District Court erred in finding and holding that under the terms of the trust instrument Peckham, the trustee, had right and authority to keep funds belonging to the trust in his private account.

XXX.

The District Court erred in holding that under the terms of the trust instrument Peckham, the trustee, was authorized and empowered to "use himself as a conduit for either property or funds from strangers to the trust".

XXXI.

The District Court erred in failing to hold that under the terms and provisions of the trust instrument, correctly interpreted, the trustee Peckham had no authority to transfer trust funds from the trust account to his personal account.

2268

XXXII.

The District Court erred in holding that it was the duty of the trustee, Peckham, merely to ultimately cause the title to property belonging to the trust estate to be vested in himself as trustee. The trust instrument, correctly interpreted, required that all property acquired by the trust should be taken and held in the name of the trustee as such.

XXXIII.

The District Court erred in holding that the evidence failed to show any dishonest transaction by the trustee Peckham.

XXXIV.

The District Court erred in holding, in effect, that the payment by the trustee of his personal indebtedness out of funds belonging to the trust was not a dishonest transaction and was not a breach of the trust.

XXXV.

The District Court erred in holding that the trust estate had placed its money and property at the disposition of the trustee Peckham without limit or control, thus failing to give effect to the terms of the trust instrument defining the powers of the trustee.

XXXVI.

The District Court erred in holding that the liability of the bank was determined by its receiving a benefit out of the trust funds and that its liability was measured by the amount of the benefits so received.

2269

XXXVII.

The District Court, having expressly found that, with the knowledge and participation of the bank, funds were taken from the trust account and applied by the trustee and the bank to the payment of the trustee's personal debts to the bank, erred in failing to further hold that this constituted a breach of trust in which the bank participated, in that the bank was liable for all subsequent withdrawals of money by the trustee from the trust account that were applied by the trustee to a purpose unauthorized by the trust instrument.

XXXVIII.

It expressly appearing that funds belonging to the trust were with the knowledge and consent of the bank applied by the trustee to the payment of his personal debts to the bank, the District Court erred in failing to hold that this constituted a breach of trust on the part of the trustee in which the bank participated.

XXXIX.

The District Court, having held that the bank wrongfully received such a direct benefit out of the $25,000.00 loan to the trust estate as was sufficient to destroy its right to recover in its suit on the notes, erred in failing to hold that cross complainants were not entitled to recover from the bank as for a wrongful participation in the trustee's breaches of trust.

XL.

The District Court erred in failing to hold that the ruling and the opinion of the Supreme Court of Texas upon the first trial and appeal of this cause did not constitute the law of the case.

2270

XLI.

The District Court, having held that the bank received certain direct benefits in connection with certain breaches of trust in which it participated, erred in holding that its liability in connection with subsequent transactions was measured by the amount of benefits it improperly received and by its good faith in connection with each transaction. It is submitted that when the bank wrongfully participated in one breach of trust, it was thereby put upon inquiry in respect to the trustee's subsequent handling of trust funds and was liable for all improper and unauthorized withdrawals of the trust account subsequently made by the trustee.

XLII.

The District Court erred in failing to find the facts specially and to state separately its conclusions of law, as required by Equity Rule 70-1/2; its findings being merely general and not special and of a nature as to require the reviewing Court to review the whole record to determine the facts, to the end that it may state and apply the law.

Wherefore, the said Cross-Complainants, appellants on this appeal, pray that the decree of the District Court may be reversed.

KILGORE & ROGERS,
GUY ROGERS,
Solicitors for said Cross-Complainants.

ORDER ALLOWING APPEAL AND FIXING BOND.

2271 Filed and entered July 3, 1937.

(Title Omitted.)

The petition of Wichita Royalty Company and E. E. Scannell, Trustee, herein praying allowance of appeal from the final decree heretofore entered in this Court dismissing their Cross Bills of Complaint and denying them recovery against the City National Bank of Wichita Falls, the City National Bank in Wichita Falls, J. T. Harrell, individually and as trustee, E. A. Deaton, Liquidating Agent, W. H. Peckham, Administrator of the Estate of G. W. Peckham, deceased, Texas Investment Company, Hazel D. Peckham, William Peckham, George Peckham, Robert Peckham, L. H. Cullum, Leslie Humphrey, Jack Jeffus, Oral Jones, Frank Kell, Joe Kell, J. J. Perkins, C. W. Snider, and F. P. Timberlake, removing Lis Pendens Notice as cloud from title, decreeing the City National Bank of Wichita Falls due the City National Bank in Wichita Falls $184,000.00, awarding foreclosure of an alleged lien upon the assets of the City National Bank of Wichita Falls, directing and confirming the sale thereof, taxing half of the costs incurred against them, overruling an original and amended Plea to the Jurisdiction and Motion to Remand, being now presented.

It is hereby ordered that an appeal be allowed to the United States Circuit Court of Appeals for the Fifth Circuit, as prayed for, and that a transcript of
2272 such part of the record and proceedings herein as the parties may by praecipe duly designate, be transmitted, duly authenticated, to the United States Circuit Court of Appeals for the Fifth Circuit at New Orleans, Louisiana, in the manner provided by law.

It is further ordered that bond for costs to be given by said cross-complainants on said appeal be and the same

is hereby fixed in the sum of One Thousand Dollars conditioned as provided by law.

Done and ordered in open Court at Dallas, Texas, this 3rd day of July, A. D. 1937.

WM. H. ATWELL,
United States District Judge

2273 COST BOND ON APPEAL.

Filed in U. S. Dist. Court July 7, 1937.

(Title Omitted.)

The State of Texas,
County of Wichita.

Know All Men By These Presents: That we, Wichita Royalty Company, a trust estate, and E. E. Scannell, trustee, as principals, and the undersigned, as surety, acknowledge ourselves to be jointly indebted to the City National Bank of Wichita Falls, The City National Bank in Wichita Falls, J. T. Harrell, individually and as trustee, E. A. Deaton, Liquidating Agent, W. H. Peckham, Administrator of the Estate of G. W. Peckham, deceased, Texas Investment Company, Hazel D. Peckham, William Peckham, George Peckham, Robert Peckham, L. H. Cullum, Leslie Humphrey, Jack Jeffus, Oral Jones, Frank Kell, Joe Kell, J. J. Perkins, C. W. Snider and F. P. Timberlake, and to all parties at interest in the above entitled numbered cause in the sum of One Thousand ($1,000.00) Dollars, conditioned:

That, whereas, upon the 9th day of April, A. D. 1937, in the District Court of the United States for the Northern District of Texas, at Wichita Falls, in a suit therein pend-

ing on the docket of said Court, styled City National Bank of Wichita Falls, et al vs. Wichita Royalty Company, et al, Number 358 in Equity, a judgment was rendered and entered denying Wichita Royalty Company and E. E. Scannell, Trustee, recovery against the City National Bank of Wichita Falls, The City National Bank in Wichita Falls, J. T. Harrell, individually and as trustee, E. A. Deaton, Liquidating Agent, W. H. Peckham, Administrator of the Estate of G. W. Peckham, deceased, Texas Investment Company, Hazel D. Peckham, William Peckham, George Peckham, Robert Peckham, L. H. Cullum, Leslie Humphrey, Jack Jeffus, Oral Jones, Frank Kell, Joe Kell, J. J. Perkins, C. W. Snider and F. P. Timberlake, and dismissing cross-complainants' Bill of Complaint, and wherein Lis Pendens Notice filed by cross-complainants against Texas Investment Company was removed as a cloud upon the title and properties of the City National Bank of Wichita Falls and Texas Investment Company, and wherein an alleged indebtedness due the City National Bank in Wichita Falls was adjudicated to be $184,000.00, with foreclosure of an alleged lien upon the City National Bank of Wichita Falls and directing the sale thereof, the Court having confirmed the sale made pursuant to said judgment, and wherein half of all costs incurred in the proceeding, including the costs of the Examiner, were taxed against cross-complainants, all as more fully appears from said judgment and orders on file and of record in the office of the clerk of said Court, to which judgment and record thereof reference is hereby made for more complete description and for all purposes, and from which said judgment and orders the said Wichita Royalty Company and E. E. Scannell, Trustee, having prosecuted their appeal to the United States Circuit Court of Appeals for the Fifth Circuit:

2274

Now, Therefore, if the said Wichita Royalty Company and E. E. Scannell, Trustee, shall prosecute their appeal

witn effect and answer and pay all costs that may
2275 be adjudged against them if they fail to make their plea good, then the above obligation is void; otherwise to remain in full force and effect.

This, the 6th day of July, A. D. 1937.

WICHITA ROYALTY COMPANY,
By E. E. SCANNELL,
Trustee.
By GUY ROGERS,
Agent & Attorney, Principals.
FIDELITY & DEPOSIT COMPANY OF MARYLAND,
(Seal) By HORRACE ROBBINS,
Attorney in Fact, Surety.

Examined, approved and ordered filed this 7th day of July, A. D. 1937.

WM. H. ATWELL,
United States District Judge.

ORDER TRANSMITTING ORIGINAL EXHIBITS.

2278 Filed and entered July 3, 1937.

(Title Omitted.)

At the request and with the consent of parties, it is Ordered that there be sent to the Circuit Court of Appeals with the Record on appeal the following original exhibits:

1. Defendant's Exhibit 18, being a deed executed by A. J. Mathis et ux;

2. Defendant's Exhibit 107, being a letter by G. W. Peckham to Wichita Royalty Company;

3. A part of defendant's Exhibit C, being Wichita Royalty Company's Checks Nos. 46, 47, 48, 49, 598, 602, 154, 610 and 607.

It is further Ordered that when the appeal shall have been decided, said Exhibits be returned to the Clerk of this Court and by said Clerk delivered to Wichita Royalty Company.

And it is so Ordered this, the 3rd day of July, A. D. 1937.

WM. H. ATWELL,
United States District Judge.

2279 PRAECIPE.

Filed in U. S. Dist. Court July 8, 1937.

(Title Omitted.)

To the Clerk of the United States District Court, for the Northern District of Texas, Sir:

You will please prepare a transcript of record to be transmitted to the Circuit Court of Appeals for the Fifth Circuit in pursuance to the appeal taken in this case, and include therein the following:

1. City National Bank's Second Amended Original Petition.

2. Wichita Royalty Company's Third Amended Original Answer, Cross-Action and Interpleader.

3. Petition for removal of City National Bank et al.

4. Notice of Intention to Remove by City National Bank et al.

5. Bond for removal of City National Bank et al.

6. Petition for Removal by Robert Peckham.

7. Notice of Removal by Robert Peckham, et al.

8. Bond for Removal by Robert Peckham, et al.

9. Petition for Removal of Hazel D. Peckham et al.

10. Bond for Removal by Hazel D. Peckham et al.

11. Original Plea to Federal Jurisdiction and Motion to Remand.

12. Order overruling Original Plea to Jurisdiction and Motion to Remand.

2280 13. City National Bank's Repleaded Bill of Complaint.

14. Amended Plea to Federal Jurisdiction and Motion to Remand.

15. Opinion on Amended Plea to Federal Jurisdiction and Motion to Remand.

16. Order overruling Amended Plea to Federal Jurisdiction and Motion to Remand.

17. Wichita Royalty Company's Answer to City National Bank's Repleaded Bill of Complaint.

18. Answer of Charles L. Black and Guy Rogers.

19. Disclaimer of Guy Rogers, Trustee.

20. Wichita Royalty Company's Repleaded Cross Bill of Complaint, Cross Action and Interpleader against City National Bank et al.

21. Wichita Royalty Company's Cross Complaint and Interpleader against J. T. Harrell.

22. Wichita Royalty Company's Recasted Cross Complaint and Interpleader against City National Bank in Wichita Falls et al.

23. Answer of City National Bank in Wichita Falls et al to Wichita Royalty Company's Cross Bill and Interpleader.

24. Answer of J. T. Harrell et al to Wichita Royalty Company's Cross Action and Interpleader.

25. Answer of City National Bank of Wichita Falls et al to Wichita Royalty Company's Cross Bill of Complaint.

26. Answer of the Administrator and Heirs of G. W. Peckham, deceased.

27. Statement of the evidence.

28. Opinion of the Court.

29. Final Judgment.

30. Report of E. A. Deaton, Special Commissioner.

31. Wichita Royalty Company's Objections to Report of Special Commissioner.

32. Order Confirming Report of the Special Commissioner.

2281 33. Petition for the Allowance of an Appeal.

34. Assignment of Errors.

35. Order Allowing Appeal and fixing security.

36. Cost Bond on Appeal.

37. Citation and Acknowledgment of Service.

38. Order transmitting Original Exhibits.

39. Praecipe.

KILGORE & ROGERS,
By GUY ROGERS,
Solicitors for Cross Complainants Appellants.

Service of the above praecipe is hereby acknowledged this 9th day of July, A. D. 1937.

BULLINGTON, HUMPHREY & KING,
By LESLIE HUMPHREY,
Solicitors for Complainant and Impleaded Defendants other than J. T. Harrell and the Estate and Heirs of G. W. Peckham, deceased.
BOONE & DUFF,
By T. R. BOONE,
Solicitors for J. T. Harrell.
ARCH DAWSON,
Solicitor for the Estate and Heirs of G. W. Peckham, deceased.

2282 AGREEMENT TO SHORTEN THE RECORD.

Filed July 14, 1937.

(Title Omitted.)

In order to shorten the Record, it is agreed that the entire transcript on removal from the District Court of

Wichita County, Texas, to the United States District Court need not be copied in full, but only such portions as are requested by either party.

It is further agreed that the copy of the Third Amended Original Answer, Cross-action and Interpleader of the Wichita Royalty Company, accompanying the citation and summons issued therein to the defendants, may be omitted from such citation and summons, as said Third Amended Original Answer, Cross-action and Interpleader is already shown in the Record.

It is further agreed that the transcript of the record from the State Court contains the usual certificate of the District Clerk as to its correctness, which certificate is dated the 25th day of July 1936, and which transcript from the State Court was filed in the United States District Court for the Northern District of Texas, at Wichita Falls, on the 25th day of July, 1936, by the Clerk of said Court.

Witness Our Hands, this 12 day of July A. D. 1937.

KILGORE & ROGERS,
By GUY ROGERS,
Solicitors for Cross Complainants-Appellants, Wichita Royalty Company and E. E. Scannell, Trustee.

TARLTON MORROW,
BULLINGTON, HUMPHREY & KING,
By LESLIE HUMPHREY,
Solicitors for Complainant, City National Bank of Wichita Falls and Impleaded Defendants.

BOONE & DUFF,
By T. R. BOONE,
Solicitors for J. T. Harrell.

ARCH DAWSON,
Solicitors for the Estate and Heirs of G. W. Peckham, Deceased, and W. H. Peckham.

SECOND AMENDED ORIGINAL ANSWER, CROSS ACTION AND INTERPLEADER OF WICHITA ROYALTY COMPANY.

2283 Filed April 27, 1931.

In the 78th District Court of Wichita County, Texas.

The City National Bank of Wichita Falls, Texas.
vs. No. 24549-B
Wichita Royalty Company, et al.

Comes now Wichita Royalty Company, a joint stock association operating under a declaration of trust filed in Wichita County, Texas, and E. E. Scannell, Trustee, and one of some thirteen hundred stockholders of Wichita Royalty Company, who joins herein for himself and all other stockholders of said Company, herein called cross complainants, in answer to plaintiffs First Amended Original Petition, as well as in cross-action against the plaintiff, the Cit. National Bank of Wichita Falls, Texas, a National Banking corporation, with its principal place of business and with officers and agents in Wichita County, Texas, and by way of interpleader against J. T. Harrell, a resident citizen of Wichita County, Texas, with leave of Court first had and obtained, file this their second amended (1) original answer, (2) plea of reconvention and cross-action against the City National Bank of Wichita Falls, Texas, and (3) interpleader and cross-complaint against the impleaded defendant J. T. Harrell, same being filed in amendment of like pleadings filed February 14, 1931, and for such pleadings say:

1. Cross-complainants except generally to the first Amended original petition filed herein by plaintiff and say the same is insufficient at law to constitute a cause of action, and of this exception pray judgment of the Court.

2. Except as herein specifically admitted, cross-complainants deny all and singular each and every averment of fact in plaintiffs said Amended Petition con-
2284 tained, demand strict proof thereof and with respect thereto put themselves upon the country and ask thereon a determination thereof by a jury.

3. Pleading non est factum to the instruments declaired upon by plaintiff, cross-complainants say that neither of said obligations herein sued on by plaintiff was executed by or with authority from Wichita Royalty Company; that Wichita Royalty Company is neither the maker nor indorser nor otherwise a party to nor bound by any instrument and/or obligation sued on nor any manner purporting to create a lien as security therefor; that if in fact any one signed Wichita Royalty Companys name to any of the instruments sued on the same was wholly inoperative against the association and no one had authority to bind said company thereby; that as will hereinafter more fully appear Wichita Royalty Company received no consideration for any of the instruments sued on by plaintiff; that as will hereinafter more fully appear the plaintiff has been fully paid and Wichita Royalty Company is not obligated to pay the plaintiff any sum of money whatsoever, while on the other hand the plaintiff and/or the impleaded defendant, J. T. Harrell, is indebted to the Wichita Royalty Company in the amounts, from the times and upon the facts hereinafter shown.

4. That as was at all times known to the plaintiff, its officers and agents, as well as the impleaded defendant, J. T. Harrell, the only power ever given by Wichita Royalty Company to any trustee and/or agent was to carry out the purpose of the organization of Wichita Royalty Company, said purpose and the declaration of trust creating said organization limiting the authority of the trustee to the purchase and sale of oil and gas royalties and other oil and gas properties; that any act
2285 done by any trustee beyond such power and for any purpose other than as last above shown

was and is wholly unauthorized and was and is not the act of Wichita Royalty Company.

5. That during 1925 and subsequent years, the former trustee of this association, George W. Peckham, now deceased, J. T. Harrell, and others whose names it is not now material to allege, were from time to time jointly interested in the purchase of mutual profit of interest in the oil and gas properties and the *the* sales thereof, constituting inter se se a partnership for the purpose of dealing in and the purchase and sale of oil and gas properties.

6. That during and after said year 1925, the impleaded defendant J. T. Harrell, was the chief executive officer of the plaintiff bank, being in active charge of all of its affairs as both the titular and real head of the institution.

During said period of time and at all times material to the facts hereinafter averred, the said J. T. Harrell knew, as did all other officers and/or agents of plaintiff bank having anything to do with the transactions hereinafter set forth, that this defendant was a joint stock association operating under a declaration of trust and having for its sole and only purpose the purchase and sale of interests in royalty and other oil and gas properties.

7. That said J. T. Harrell, for and on behalf of plaintiff bank, passed upon the lines of credit for G. W. Peckham as an individual, for the respective enterprises in which the Harrell, Peckham et al partnership engaged, for Wichita Royalty Company, and for the partnership known as Marlborough Addition whose constituent members are hereinafter named.

2286 8. On or about January 16, 1926, Wichita Royalty Company was not indebted to the plaintiff bank in any sum of money whatsoever and owed no debts other than current bills, which bills themselves have subsequently been paid. That theretofore the plaintiff bank,

acting by and through its executive, J. T. Harrell, had loaned to this defendant various sums of money and in each instance had taken as security therefor deeds of trust upon the real properties of this defendant, but all of which former loans had all been paid, and on January 1st, 1926, this defendant was not indebted to the City National Bank in any sum whatsoever.

9. That in the late fall of 1925, J. T. Harrell, W. H. Peckham, G. W. Peckham and J. A. Kemp, as individuals and partners operating under the firm name of "Marlborough Addition" began negotiations for the purchase of certain properties adjacent to the City Limits of Wichita Falls, Texas, with a view of its development as a suburban site to be known as Marlborough Addition, which negotiations culminated on or about January 8th, 1936, in said individuals as partners becoming possessed with the title to 57.65 acres of land in close proximity to the City of Wichita Falls, Texas, the same being bought from Highland Irrigation Company, and in the deeds of conveyance to said partners of Marlborough Addition, the said J. T. Harrell, W. H. Peckham, G. W. Peckham and J. A. Kemp had become jointly and severally liable to the Highland Irrigation Company in the payment of $51,-885.00 as evidenced by their several notes secured by vendors lien retained in the conveyance.

10. That at the time of the purchase by said partnership known as Marlborough Addition G. W. Peckham as an individual was personally obligated to the
2287 City National Bank of Wichita Falls, Texas, upon notes executed by him in excess of twenty-eight thousand dollars.

11. That said J. T. Harrell as an executive of the plaintiff bank personally handled the line of credit of G. W. Peckham as an individual and at all times knew the financial condition of the said G. W. Peckham and knew the financial condition of Wichita Royalty Company of which

the said G. W. Peckham was until the time of his death the local agent and trustee; that said Harrell personally handled on behalf of the bank the line of credit for Marlborough Addition and personally handled all the financial affairs of Marlborough Addition; that said Harrell on behalf of said bank, personally handled the line of credit of the partnership of Harrell, Peckham and others in their operation in the oil business; that said J. T. Harrell as an individual and as an officer of the bank at all times knew the financial transactions of or pertaining to all of said undertakings.

12. That said G. W. Peckham was without funds sufficient to pay off and discharge the obligations incurred by his joining the other partners of Marlborough Addition in the purchase of said acreage with a view to its development as a suburban site, and his line of credit with plaintiff bank was exhausted by the more than twenty-eight thousand dollar item then due the bank by him, whereupon it was conceived by the said G. W. Peckham with the knowledge, consent and acquiescence if not the active participation by the impleaded defendant J. T. Harrell, and/or said banks having knowledge of such facts sufficient to put the bank upon inquiry which if performed would have disclosed to the bank a full knowledge that the City National Bank of Wichita Falls would loan sufficient monies so that therefrom the said G. W. Peckham as an individual might obtain funds
2288 sufficient to discharge the Marlborough debt to the extent of G. W. Peckham's liability thereon.

13. Accordingly and on about January 16, 1926, G. W. Peckham executed to the plaintiff bank this defendants note for $15,300.00 which was approved by the impleaded defendant J. T. Harrell upon behalf of the plaintiff bank, and thereafter and between the same parties a loan was negotiated whereby this companys note payable record at said bank was increased March 1, 1926, $25,000.00 the balance on the bank's note payable record as of that date

showing an obligation of the Wichita Royalty Company to the bank of $40,800.00.

14. At and prior to the negotiation of said entire loan, it was understood between the parties that W. H. Peckham, a brother of G. W. Peckham, would convey to G. W. Peckham the W. H. Peckham interest in and to the assets of Marlborough Addition, and accordingly on March 6, 1926, the said W. H. Peckham interest in said Marlborough Addition in consideration of one dollar and other things of value whereby the said G. W. Peckham was vested with title to an undivided *hald* interest in said Marlborough Addition.

15. Check No. 478, on March 6th, 1926, and at a time when G. W. Peckham had on deposit in the City National Bank but $125.00, and was indebted to said bank upon notes payable in excess of $28,050.00, the said G. W. Peckham caused Wichita Royalty Companys Check No. 478 to be issued payable to said bank in the sum of $17,623.70.

Said check so issued and delivered to the plaintiff bank was drawn thereon upon a voucher form, and on said check and as a part thereof was a reference to an attached remittance statement showing the purpose of the item, and which read as follows:

2289 "Real Estate—City Property.

To apply on purchase of 1/2 undivided interest in the Marlborough Addition (consisting of 252 lots) to the City of Wichita Falls, Texas, (Total consideration is $49,566.20. This check No. 478 for $17,623.70 and check No. 479 of this date for $6,000.00 represent the total cash consideration.

For the balance of consideration our interest is subject to $23,215.80 due 1-2-3 years from September 19, 1925

this indebtedness being secured by *secured by* 12 vendors lien notes against the property, which draw 9% interest per annum and are payable to the Highland Irrigation Company, See Journal entries Nos. 27 and 28, March 6, 1936.

"March 6, 1926 478 City National Bank $17,623.70."

The officers and agents of the City National Bank knew and/or were possessed with knowledge of such facts as if reasonably inquired into would have disclosed full knowledge to the bank that the issuance of such check was beyond the power of the trustee and for a purpose beyond the scope of his employment, and for purpose unterior to the general purpose for which the company was organized but with such knowledge and possessed of such facts and contrary to the direction of said check itself and with no competent instruction other than the check as written, the plaintiff bank charged this defendants account therewith and gave to G. W. Peckham as an individual person credit therefor permitting said fund to be dissipated by G. W. Peckham after his intermingling said monies with his personal funds and thereupon checking the same out for purposes not within the compass of the organization and not for its benefit, the
2290 officers and agent of plaintiff bank actively participating with knowledge, in the transfer of said fund from this defendants account to the personal account of G. W. Peckham.

Said monies as wrongfully diverted from this Defendants account would never have been returned to this defendant.

16. Check No. 479, on March 6, 1926, and at a time when G. W. Peckham's personal account with the City National Bank had been reduced to but $125.20 and whose indebtedness to the bank at said time was in excess of $28,050.00, the said G. W. Peckham caused this de-

fendants check for $6,000.00 to be issued payable to Security National Bank, and on said check and as a part thereof was a reference to an attached remittance statement showing the purpose of the item, and which read as follows:

"Real Estate City Property.

To apply on purchase of 1/2 undivided interest in the Marlborough Addition (consisting of 252 lots) to the City of Wichita Falls, Texas. (Total consideration is $49,-566.20. This check No. 479 for $6,000.00 and check No. 478 for $17,623.70 represent the total cash consideration.

For the balance of consideration our interest is subject to $23,215.50 due in 1-2-3 years from September 19, 1925, and $2,727.00 due 1-2-3 years from January 8, 1927, this indebtedness being secured by 12 Vendors lien notes against the property, which drawn 8% interest per annum and are payable to the Highland Irrigation Company. See Journal Entries Nos. 27 and 28, March 6, 1926.)

Said check was by the City National Bank charged against this defendant account, said G. W. Peckham having received personal credit therefor in the
2291 Security National Bank without authority and the monies being thus withdrawn from Wichita Royalty Companys deposit with the City National Bank and which withdrawal has never been replaced in whole or in part.

17. Check No. 485, on March 31, 1926, and at a time when G. W. Peckham had on deposit in the City National Bank but $503.98 and was indebted to the City National Bank in excess of $28,050.00 the said G. W. Peckham caused Wichita Royalty Companys check No. 485 to be issued in the sum of $7500.00 payable to the plaintiff bank, and on said check and as a part thereof was a reference

to an attached remittance statement showing the purpose of the item and which read as follows:

"Real Estate Improvements to apply on our half interest in improving the Marlborough Addition Wichita Falls, Texas, the improvements consisting of rights, water, gas, sewerage and grading and paving streets, $7500.00."

That contrary to the direction of said check and without authority and possessed of knowledge of all the facts above pleaded, and with knowledge that said G. W. Peckham was without authority to receive personal credit for said trust funds, the plaintiff bank charged this defendants account with $7500.00 and credited the account by deposit of G. W. Peckham therefor and permitted said fund to be intermingled with the personal funds of G. W. Peckham and by his disbursed for purposes in no way enuring to the benefit of this defendant, but solely and only for items of his own account.

18. Check No. 503, on May 20, 1926, and at a time when G. W. Peckham's account with the City National Bank had been reduced to but $328.27, and at a time when the said G. W. Peckham was indebted to the Plain-
2292 tiff Bank in excess of $28,050.00, the said G. W. Peckham caused this defendants check No. 503 to be issued payable to the order of G. W. Peckham drawn on the City National Bank and in the sum of three thousand dollars, and on said check and as a part thereof was a reference to an attached remittance statement showing the purpose of the item, and which read as follows:

"To improvements on Marlborough Addition $3,000.00"

That said check showed on its face that it was drawn upon trust funds and payable to the order of the trustee from which together with other facts shown above, the officers and agents of plaintiff bank knew that the trustee had no authority to withdraw the funds of his principal

and deposit the same to his personal account, but notwithstanding such knowledge the officers of plaintiff bank charged said check against Wichita Royalty Companys account and gave to G. W. Peckham personal credit therefor, and on even date therewith cashed the said G. W. Peckham's check against said fund so deposited in the sum of two thousand dollars, and by other checks permitted the said G. W. Peckham to withdraw said entire amount and the said three thousand dollars has never been replaced.

19. Check No. 507, That on May 9, 1926, and at a time when G. W. Peckham had on deposit with plaintiff bank but $517.72 was indebted to the plaintiff bank in excess of $28,050.00 said G. W. Peckham caused Wichita Royalty Companys check No. 507 to be issued for $1500.00 drawn on and payable to the plaintiff bank, and on which check and as a part thereof was a reference to an attached remittance statement showing the purpose of the item and which read as follows:

2293 "To apply on our proportion of improvements, $1500.00". That said check was on June 2, 1926 charged against Wichita Royalty Companys account by plaintiff and credited to the personal account of G. W. Peckham, with knowledge upon the part of the officers and agents of Plaintiff bank that the said trustee had no right or authority to receive said trust funds nor to have the same deposited to his personal account, and said money so deposited and so diverted from the trust fund was without authority and known to be such by the officers of the bank when the transfer was permitted.

20. Check No. 510, on June 16, 1926, at a time when G. W. Peckham was personally indebted to plaintiff bank in excess of $28,050.00, the said G. W. Peckham caused this defendants check No. 510 to be issued for $4500.00 drawn on and payable to the plaintiff bank, and on said check and as a part thereof was a reference to an attached re-

mittance statement showing the purpose of the item and which read as follows:

"To apply on improvements on Marlborough addition to our proportion, $4500.00."

That on or about said date said $4500.00 was charged against Wichita Royalty Company's account and credited to the personal account of G. W. Peckham, who was without authority to draw said check for such purpose and to whom no part of said funds were due or owing and who had no right to receive the same, but contrary to the direction of said check and with no competent authority whatsoever but the check itself, the plaintiff bank permitted the said G. W. Peckham to intermingle said trust fund with his own and to disburse the same for his own particular benefits.

21. Check No. 519. On July 13, 1926, and at a time when G. W. Peckham was personally indebted to the plaintiff bank in excess of $25,000.00 the said G. W. Peckham caused Wichita Royalty Companys check No. 519 to be issued in the sum of $1,000.00 drawn on and payable to the plaintiff bank and on said check and as a part thereof was a reference to an attached remittance statement showing the purpose of the item and which read as follows:

2294

"To apply on improvements on Marlborough Addition (our proportion) $1,000.00."

That on or about July 15, 1926 the plaintiff bank charged this defendants account with said one thousand dollars and credited the personal account of G. W. Peckham therewith, which money was co-mingled with the personal funds of G. W. Peckham with the active participation by the officers and agents of plaintiff bank, and disbursed by the said G. W. Peckham for his own individual account and in no way connected with the business of the trust estate.

22. Check No. 525. On August 2, 1926, and at a time when G. W. Peckham's account with plaintiff bank was

$720.39, and his indebtedness to the plaintiff bank was in excess of $25,000.00, the said G. W. Peckham caused this defendants check No. 525 to be issued in the sum of four thousand dollars, drawn on and payable to the plaintiff bank, and on said check and as a part thereof was a reference to an attached remittance statement showing the purpose of the item, and which read as follows:

"Notes payable: To apply on note due September 19, 1926, to Highland Irrigation Company for land in fee, $4,000.00.

That on or about August 2, 1926, the plaintiff bank charged this defendants account with said four thousand dollars and credited the personal account of G. W. Peckham therewith without authority therefor and possessed of knowledge that the said trustee had no auth-
2295 ority to receive personal credit therefor, which funds were so permitted to be intermingled with the personal funds of G. W. Peckham and by him disbursed in the payment of items personal to G. W. Peckham and in no way enuring to the benefit of this plaintiff.

23. Check No. 532. On August 27, 1926, and at a time when G. W. Peckham had on deposit with plaintiff bank but $119.52 and owed the plaintiff bank in excess of $28,050.00, the said G. W. Peckham caused the defendants check No. 532 to be issued, drawn on and payable to the plaintiff bank in the sum of $4357.58, and on said check and as a part thereof was a reference to an attached remittance statement showing the purpose of the item, and which read as follows:

"Notes payable: To apply on note due 9/19/26 to Highland Irrigation Company for land in fee	$3738.50
Interest expense: On above note, 9% for one year.	619.08
	$4357.58

That on or about said date Wichita Royalty Companys bank account was charged therewith and personal credit therefor given G. W. Peckham, and said fund was co-mingled with the personal funds of G. W. Peckham and by him disbursed for items personal to himself and in no way enuring to the benefit of this defendant.

24. Check No. 550. On November 20, 1926, the said G. W. Peckham caused Wichita Royalty Companys check No. 550 to be issued, drawn on and payable to the City National Bank in the sum of $7500.00, and on said day the said Plaintiff bank charged Wichita Royalty Company's account therewith and credited the same to the personal account of G. W. Peckham and permitted said monies to be co-mingled with the personal funds of G. W. Peckham and be disbursed for purposes beyond the
2296 business of the trust estate and in no way connected therewith but purely personal to the said G. W. Peckham.

25. Check No. 556. On December 22, 1926, G. W. Peckham caused Wichita Royalty Companys check No. 556 to be issued for $700.00 drawn on the City National Bank and payable to G. W. Peckham, and on said check and as a part thereof was a reference to an attached remittance statement showing the purpose of the item and which read as follows:

"To apply on two notes of $7,738.50 at rate of 8% per annum, this interest applying on period 9/19/25 to 9/19/26 —Highland Irrigation Company notes. $700.00."

That the officers and agents of plaintiff bank knew that the said G. W. Peckham was trustee of the Wichita Royalty Company and knew he had no authority to draw a check for the purpose shown, and knew he had no right to receive personal credit therefor, but nevertheless plaintiff bank charged said check against Wichita Royalty Companys' account and credited said item upon an ac-

count to which the said G. W. Peckham was personally indebted.

26. Check No. 556-A on December 22, 1926, G. W. Peckham caused Wichita Royalty Companys check No. 556-A to be issued for $538.16, drawn on the City National Bank and payable to G. W. Peckham, and on said check and as a part thereof was a reference to an attached remittance statement showing the purpose of the item, and which read as follows:

"To apply on two notes of $7,738.50, at rate of 8% per annum, this interest applying on period 9/19/25 to 9/19/26 —Highland Irrigation Company notes, for balance of interest paid see check No. 556. $538.16".

That the said officers and agents of plaintiff bank knew the said G. W. Peckham was trustee of the Wich-
2297 ita Royalty Company and knew he had no authority to draw a check for the purpose shown, and knew he had no right to receive personal credit therefor, but nevertheless plaintiff bank charged said check against Wichita Royalty Companys account and credited said item upon an account to which the said G. W. Peckham was personally indebted.

27. Check No. 571. On January 19, 1927, G. W. Peckham caused Wichita Royalty Companys check No. 571 to be issued, drawn on and payable to the plaintiff bank in the sum of Two Thousand Dollars, and on said check and as a part thereof was a reference to an attached remittance statement showing the purpose of the item and which read as follows:

"To apply on paving excess strip, Marlborough Addition. $2,000.00".

With knowledge of the purpose of said check and the want of authority in the trustee to issue the same for such

purpose, and knowing the trustee not to be entitled personally to receive said trust funds, the officers and agents of Plaintiff bank charged said check to Wichita Royalty Companys account and credited the personal account of G. W. Peckham therewith and permitted said G. W. Peckham to draw checks thereon.

28. Check No. 579. On February 19, 1927, G. W. Peckham caused Wichita Royalty Companys check No. 579 to be issued, drawn on and payable to the City National Bank, and on said check and as a part thereof was a reference to an attached remittance statement showing the purpose of the item and which reads as follows:

"To apply on paving strip, Marlborough Addition, $2,-500.00" With knowledge of the purpose of said check and the want of authority in the trustee to issue the same for such purpose, and knowing the trustee not to be 2298 entitled personally to receive said trust funds, the officers and agents of plaintiff bank charged said check to Wichita Royalty Companys account and credited the personal account of G. W. Peckham therewith and permitted said G. W. Peckham to draw checks thereon.

29. Check No. 880 on January 24, 1930, the trustee of Wichita Royalty Company executed Wichita Royalty Companys check No. 880, drawn on the City National Bank, payable to Marlborough Addition in the sum of $1500.00 and said check was given to J. T. Harrell as an officer and agent in plaintiff bank; and who knew the trustee had no authority to issue said check to Marlborough Addition, but which check was charged against the account of Wichita Royalty Company and went to the credit of that account from which by J. T. Harrell's disbursement, the Marlborough Additions' liability to Highland Company was reduced, and the personal liability of J. T. Harrell protento reduced, all with knowledge of the want of authority and of the improper use of said funds.

and there was an active participation by the plaintiff bank and/or the impleaded defendant, Harrell, in the wrongful diversion of trust funds.

30. Check No. 908. On May 13, 1930, the then trustee of Wichita Royalty Company caused Wichita Royalty Companys check No. 908 for $500.00 to be issued, drawn on plaintiff bank and payable to Texas Investment Company successor in interest to the partnership of Marlborough Addition, which check was requested by the impleaded defendant, J. T. Harrell, and to whom the same was delivered, and who knew that the trustee had no authority to issue such check for such purpose and knew that the funds of Wichita Royalty Company should not be diverted for that purpose, but notwithstanding
2299 such knowledge the plaintiff bank charged Wichita Royalty Companys account therewith and the fund was used in part liquidation of that indebtedness for which J. T. Harrell as an individual was personally liable.

31. That at the times, in the amounts and by check numbers shown, the trustees of Wichita Royalty Company issued its several checks payable to and drawn on the City National Bank which were charged against Wichita Royalty Companys deposit with said bank and credited upon the banks ledger showing Wichita Royalty Company's direct liability by reason of the loans made in January and March, 1926, respectively and more particularly shown above:

Check No.	Date	Amount
495	April 23, 1926	$ 300.00
506	May 29, 1926	500.00
521	July 16, 1926	300.00
531	August 27, 1926	500.00
540	Oct. 13, 1926	300.00
569	January 11, 1927	300.00
584	March 1, 1927	500.00
599	April 14, 1927	300.00

Check No.	Date	Amount
615	June 8, 1927	500.00
628	July 16, 1927	1500.00
682	January 18, 1928	2000.00
717	May 17, 1928	220.00
733	July 23, 1928	220.00
752	September 27, 1928	424.66
768	December 4, 1928	2000.00
891	February 19, 1929	1500.00
814	June 7, 1929	1500.00
824	July 15, 1929	212.49
836	August 30, 1929	$1000.00
856	November 23, 1929	1500.00
890	February 24, 1930	1000.00
898	April 10, 1930	1000.00
920	June 14, 1930	1500.00
930	July 14, 1930	3055.42

That at no time from and after October 1st, 1925, was Wichita Royalty Company indebted to the City National Bank in any sum whatsoever unless it be the transactions above shown whereby the bank gave to Wichita Royalty Company credit by deposit in January and March 1926 for $40,800.00 and took, Wichita Royalty Company's notes therefor in renewal for which the present note sued on was executed and which note so declared upon his no other consideration other than said original transactions; That all of the many checks herein elsewhere pleaded drawn on and payable to the City National Bank and charged against Wichita Royalty Companys account, no credit was given Wichita Royalty Company other than as last above shown in this numbered paragraph.

32. That of all of the monies diverted from Wichita Royalty Companys' account into the account of G. W. Peckham as herein elsewhere more fully appears, no part thereof was ever restored to Wichita Royalty Company and/or paid by the said G. W. Peckham out of the co-

mingled funds, save and except the following payments by G. W. Peckham to the City National Bank credited upon the liability ledger of Wichita Royalty Company:

November 26, 1926	$ 500.00
August 31, 1927	500.00
October 19, 1927	1336.00
February 15, 1928	3485.33
November 25, 1927	1500.00

2301 Said payments so made by the said G. W. Peckham total $7,321.33.

33. Check No. 582 on March 1st, 1927, G. W. Peckham had but $66.62 on deposit with plaintiff bank and owed said plaintiff bank more than twenty-seven thousand dollars, and thereupon the said G. W. Peckham caused Wichita Royalty Company's check No. 582 to be issued in the sum of $500.00, drawn on and payable to the plaintiff bank, and on said check and as a part thereof was a reference to an attached remittance statement showing the purpose of the item, and reading as follows:

"Interest expense: Interest on note held by City National Bank."

That contrary to the direction of said check and without authority and possessed of knowledge of all the facts herein elsewhere pleaded, and knowing that G. W. Peckham was without authority to receive personal credit for said funds, the plaintiff bank charged this defendants account with said check and credited the account of G. W. Peckham therewith and permitted said fund to be intermingled with the personal funds of G. W. Peckham and by him disbursed for purposes in no way enuring to the benefit of Wichita Royalty Company.

34. Check No. 620. On June 18, 1927, and at a time when G. W. Peckham had on deposit with the plaintiff

bank but $13.43 and was indebted to said bank in excess of $17,750.00 said G. W. Peckham caused this defendants check No. 620 to issue in the sum of $1,200.00 drawn on and payable to the City National Bank, and on said check and as a part thereof was a reference to an attached remittance statement showing the purpose of the item, reading as follows:

"Notes payable: To apply on note for money
2302 borrowed from City National Bank, $1,200.00."

That contrary to the direction of said check and without authority and possessed of knowledge of all the facts herein elsewhere pleaded, and knowing that G. W. Peckham was without authority to receive personal credit for said funds, the plaintiff bank charged this defendants account with said check and credited the account of G. W. Peckham therewith and permitted said fund to be intermingled with the personal funds of G. W. Peckham, and by him disbursed for purposes in no way enuring to the benefit of Wichita Royalty Company.

35. Check No. 635. On August 16, 1927, and at a time when G. W. Peckham had on deposit with plaintiff bank but $946.69 and when indebted to the plaintiff bank in excess of $18,750.00 with checks outstanding in excess of the combined total of his then deposit, said G. W. Peckham caused Wichita Royalty Company's check No. 635 to issue in the sum of $1,500.00 drawn on and payable to the City National Bank, and on said check and as a part thereof was a reference to an attached remittance statement showing the purpose of the item reading as follows:

"Notes payable: To apply on note held by City National Bank $1,500.00."

That contrary to the direction of said check and without authority and possessed of knowledge of all the facts herein elsewhere pleaded, and knowing that G. W. Peck-

ham was without authority to receive personal credit for said funds, the plaintiff bank charged this defendants account with said check and credited the account of G. W. Peckham therewith and permitted said fund to be intermingled with the personal funds of G. W. Peckham, and by him disbursed for purposes in no way enuring to the benefit of Wichita Royalty Company.

2303 36. Check No. 650. On October 14, 1927, and at a time when G. W. Peckham's deposit account with the plaintiff bank was down to $7.31 and he was personally indebted to plaintiff bank in excess of eight thousand dollars, the said G. W. Peckham caused Wichita Royalty Company's check No. 650 to issue in the sum of $2,400.00 drawn on and payable to the City National Bank, and on said check and as a part thereof was a reference to an attached remittance statement showing the purpose of the item, and reading as follows:

"Notes payable: To apply on money borrowed from City National Bank. $2,400.00."

That contrary to the direction of said check and without authority, and possessed of knowledge of all the facts herein elsewhere pleaded, and knowing that G. W. Peckham was without authority to receive personal credit for said funds, the plaintiff bank charged this defendants account with said check and credited the account of G. W. Peckham therewith and permitted said fund to be intermingled with the personal funds of G. W. Peckham, and by him disbursed for purposes in no way enuring to the benefit of Wichita Royalty Company.

37. Check No. 657. On November 25, 1927, G. W. Peckham caused Wichita Royalty Company's check No. 657 to issue for $1800.00 drawn on and payable to the plaintiff bank, and on said check and as a part thereof was

a reference to an attached remittance statement showing the purpose of the item, reading:

"Interest expense, to interest on notes held by City National Bank, $1800.00."

When on November 25, 1927, the said G. W. Peckham presented said check at said bank to whom it was payable and on whom it was drawn, was the written instruction to apply the same upon the notes payable of this
2304 defendant, the bank records showed that the said G. W. Peckham as an individual had on deposit with said bank $17.72 and the officers of the bank knew that the said G. W. Peckham did not carry a bank account anywhere else, and it was also known, as reflected by the bank's liability records, that said G. W. Peckham on said day was personally indebted to the City National Bank in excess of $18,960.00 and the said G. W. Peckham had personal accounts necessary then to be paid and had a $1500.00 obligation that day to pay so the officers and agents of plaintiff bank charged this defendants account with said check, and contrary to said instructions gave to said G. W. Peckham personal credit therefor with knowledge that said funds were trust funds, and thereupon permitted the said G. W. Peckham to withdraw therefrom on the day of said deposit $1500.00 for his own personal account, and the balance thereof in the next few days, so that on December 2, 1927, the said G. W. Peckham's account was again down to $60.76.

38. Check No. 710. On April 20, 1928, the said G. W. Peckham caused Wichita Royalty Company's check No. 710 to be issued for $1850.00 and on said check and as a part thereof was a reference to an attached remittance statement showing the purpose of the item and reading:

"Notes payable. To apply on indebtedness at City National Bank, interest and principal $1850.00."

At the time said check was to the bank presented G. W. Peckham had on deposit with plaintiff bank but $25.72 with personal obligations to meet, the said G. W. Peckham taking said check so drawn to plaintiff bank whose officers and agents with knowledge of the trust nature of the fund and the lack of authority in Peckham to receive same, charged Wichita Royalty Company's account therewith and gave G. W. Peckham per-
2305 sonal credit therefor, who within ten days thereafter withdrew the entire amount for purposes personal to himself so that on May 10, 1928, G. W. Peckham account was again down to $72.54, and on May 14th, to $47.54, although at said time and at the time of Peckham's presentment of said check to the bank he was personally indebted to the plaintiff bank in excess of nineteen thousand dollars.

39. Check No. 721. On June 1st, 1928, G. W. Peckham caused Wichita Royalty Company's check No. 721 to be issued in the sum of $424.66, drawn on and payable to the plaintiff bank, and on said check and as a part thereof was a reference to a remittance statement showing the purpose of the item reading as follows:

"Interest on notes at City National Bank, $424.66."

That possessed of knowledge as herein elsewhere pleaded, the officers of the bank charged Wichita Royalty Company's account therewith and gave G. W. Peckham personal credit therefor and permitted him to withdraw the same in payment of items of indebtedness of his own.

40. Check No. 591. On March 23, 1917, and at a time when G. W. Peckham's deposit account with the plaintiff bank had gotten to $39.38, and the said G. W. Peckham was personally indebted to the plaintiff bank in excess of twenty-seven thousand dollars, the said G. W. Peckham caused Wichita Royalty Company's check No. 591 to issue for two thousand dollars, drawn on and payable

to the plaintiff bank, and the officers and agents of the plaintiff bank, with knowledge of the trust nature of the fund upon which said check was drawn, and the want of authority in the trustee to receive personal credit therefor, charged Wichita Royalty Company's account therewith and gave to G. W. Peckham personal credit therefor and permitted the intermingling of said
2306 trust fund with the personal funds of the trustee, who, with checks drawn thereon dissipated the same for purpose enuring only to himself.

41. Check No. 541. On October 13, 1926, G. W. Peckham caused Wichita Royalty Company's check to be issued, drawn on and payable to the City National Bank for ten thousand dollars, and with knowledge of the trust nature of the fund upon which said check was drawn, and with knowledge and/or possessed of knowledge of such facts as sufficient to charge the plaintiff bank with inquiry, which if reasonably pursued would have disclosed the full facts that the trustee was without authority to have and/or receive from the cestui que trust all or any part of said ten thousand dollars, said plaintiff bank charged Wichita Royalty Company's account with ten thousand dollars upon no competent instruction other than the check as written and without the City National Bank's indorsement thereon, and permitted said trust monies to be intermingled with the personal funds of the trustee and withdrawn by him upon checks drawn thereon for purposes personal to himself, the officers and agents of plaintiff bank thus actively participating in the wrongful diversion of trust funds to the personal account of G. W. Peckham.

42. Check No. 554. On December 2, 1926, G. W. Peckham caused Wichita Royalty Company's check to be issued, drawn on and payable to the City National Bank for fifteen hundred dollars, and with knowledge of the trust nature of the fund upon which said check was drawn, and with knowledge and/or possessed of knowl-

edge of such facts as sufficient to charge the plaintiff bank with *inquirty*, which if reasonably pursued would have disclosed the full facts that the trustee was without authority to have and/or receive from the cestui
2307 que trust all or any part of fifteen hundred dollars, said plaintiff bank charged Wichita Royalty Company's account with fifteen hundred dollars upon no competent instruction other than the check as written and without the City National Bank's indorsement thereon, and permitted said trust monies to be intermingled with the personal funds of the trustee and withdrawn by him upon checks drawn thereon for purposes personal to himself, the officers and agents of plaintiff bank thus actively participating in the wrongful diversion of trust funds to the personal account of G. W. Peckham.

43. Check No. 557. On December 7, 1926, G. W. Peckham caused Wichita Royalty Company's check to be issued, drawn on and payable to the City National Bank for nineteen hundred twenty dollars, and with knowledge of the trust nature of the fund upon which said check was drawn, and with knowledge and/or possessed of knowledge of such facts as sufficient to charge the plaintiff bank with inquiry, which if reasonably pursued would have disclosed the full facts that the trustee was without authority to have and/or receive from the cestui que trust all or any part of said nineteen hundred twenty dollars, said plaintiff bank charged Wichita Royalty Company's account with nineteen hundred twenty dollars upon no competent instruction other than the check as written and without the City National Bank's indorsement thereon, and permitted said trust monies to be intermingled with the personal funds of the trustee and withdrawn by him upon checks drawn thereon for purposes personal to himself, the officers and agents of plaintiff bank thus actively participating in the wrongful diversion of trust funds to the personal account of G. W. Peckham.

2308 44. Check No. 583. On March 1st, 1927, G. W. Peckham caused Wichita Royalty Company's check to be issued, drawn on and payable to the City National Bank for three hundred one dollars eighty-two cents, and with knowledge of the trust nature of the fund upon which said check was drawn, and with knowledge and/or possessed of knowledge of such facts as sufficient to charge the plaintiff bank with inquiry, which if reasonably pursued would have disclosed the all facts that the trustee was without authority to have and/or receive from the cestui que trust all or any part of said three hundred one dollars eighty-two cents, said plaintiff bank charged Wichita Royalty Company's account with three hundred one dollars eighty-two cents upon no competent instruction other than the check as written and without the City National Bank's indorsement thereon, and permitted said trust monies to be intermingled with the personal funds of the trustee and withdrawn by him upon checks drawn thereon for purposes personal to himself, the officers and agents of plaintiff bank thus actively participating in the wrongful diversion of trust funds to the personal account of G. W. Peckham.

45. On February 6, 1926, W. C. Duncan drew a draft upon the American Mineral Spirits Company through the First National Bank of Chicago, Illinois, for six thousand dollars for payment of a royalty deed from this defendant to said company, which draft was honored and royalty deed accepted, whereupon the Wichita State Bank and Trust Company with which bank the item originated, issued its Cashier's check payable to W. C. Duncan for six thousand dollars, which check was by said W. C. Duncan indorsed payable to order of G. W. Peckham for Bristow Royalty, and which check was then taken by the said G. W. Peckham to the City National Bank, plaintiff, and either possessed with knowl-
2309 edge or of such facts and circumstances which if reasonably inquired into would have disclosed

knowledge that said fund was trust fund and the property of this defendant, said plaintiff bank gave to the said G. W. Peckham personal credit therefor and permitted the same to be dissipated along with the co-mingled funds of G. W. Peckham, and this defendant has never been repaid therefor.

That the plaintiff bank received from G. W. Peckham a check for $3488.33 drawn on and payable to the plaintiff bank and which was by the bank applied in pro tanto reduction of its notes receivable account with Wichita Royalty Company.

46. On or about November 25, 1927, Wichita Royalty Company contracted with Petroleum Royalties Corporation, to sell and the purchaser to buy, an interest in royalty for a consideration of six thousand dollars, which contract was placed with the City National Bank, plaintiff, as escrow agent, together with a mineral deed, and certain notes in said contract described, said plaintiff bank knowing the trust nature of the sale and the trust nature of the proceeds therefrom, wrongfully and without authority permitted the proceeds of said sale, to-wit: six thousand dollars to be deposited to the personal account of G. W. Peckham and by him disbursed for items of indebtedness of his own, whereby this defendant lost six thousand dollars that has not been repaid.

The deferred payments mentioned in said escrow contract as they matured were received by the plaintiff bank and disposed of as follows:

On January 9, 1928, Note No. 1 was paid to the City National Bank, whereupon said bank took a
2310 receipt therefor, executed in the name of this defendant by G. W. Peckham, its trustee, whose individual account was in dire need of funds, his deposit being but $156.35, whereupon the plaintiff bank deposited and gave credit for the $1200.00 so received as trust

funds belonging to this defendant, to the individual account of G. W. Peckham, and thus was a party to the wrongful diversion of said trust funds and the consequent dissipation thereof in G. W. Peckham checking the same out with the knowledge and consent of the plaintiff bank, its officers, agents and employees.

On January 25, 1928, G. W. Peckham's personal account was in sore need of funds, having on deposit but $460.69 and being indebted to the City National Bank personally in excess of nineteen thousand dollars, The City National Bank received as escrow agent the proceeds from the second deferred payment, and with knowledge that the same was trust funds gave G. W. Peckham personal credit therefor upon his bank account and/or were available to this defendant, but were wrongfully diverted by the plaintiff acting with G. W. Peckham, with knowledge of the trust nature of the fund.

On February 28, 1928, G. W. Peckham's bank account had gotten down to $28.18 and he was personally liable to the plaintiff bank for more than nineteen thousand dollars so when the City National Bank received as escrow agent the third deferred payment of $1224.00, instead of giving credit therefor to this defendant, placed the same to the personal credit of G. W. Peckham and thus actively participated as in the other respects above, in the wrongful diversion of said trust funds, permitted the same to be co-mingled with the small balance that Peckham had on hand and checked out for items personal to himself.

47. Check No. 427. On October 8, 1925, G. W.
2311 Peckham caused Wichita Royalty Company's check No. 427 to be issued in the sum of $5500.00 drawn on and payable to the City National Bank, and at said time Wichita Royalty Company was not indebted to the City National Bank in any sum whatsoever, and the officers and agents of the bank knew the trust nature

of the account against which said check was drawn, and knew that the trustee had no personal right to personal credit therefor, but the bank charged Wichita Royalty Company's account with $5500.00 and credited the same to the personal account of G. W. Peckham.

48. Check No. 451. On December 28, 1925, G. W. Peckham caused Wichita Royalty Company's check No. 451 to be issued in the sum of $1250.00 drawn on and payable to the City National Bank, and at said time Wichita Royalty Company was not indebted to the City National Bank in any sum whatsoever, and the officers and agents of the bank knew the trust nature of the account against which said check was drawn, and knew that the trustee had no personal right to the personal credit therefor, but the bank charged Wichita Royalty Company's account with $1250.00 and credited the same to the personal account of G. W. Peckham.

49. Check No. 458. On January 11, 1926, G. W. Peckham caused Wichita Royalty Company's check No. 458 to be issued in the sum of $5000.00, drawn on and payable to the City National Bank, and at said time Wichita Royalty Company was not indebted to the City National Bank in any sum whatsoever, and the officers and agents of the bank knew the trust nature of the account against which said check was drawn, and knew that the trustee had no personal right to personal credit therefor, but the bank charged Wichita Royalty Company's account with $5000.00 and credited the same to the personal account of G. W. Peckham.

2312 50. Check No. 461. On January 18, 1926, G. W. Peckham caused Wichita Royalty Company's check No. 458 to be issued in the sum of $15,769.07, drawn on and payable to the City National Bank, and at said time Wichita Royalty Company was not indebted to the City National Bank in any sum whatsoever, and the officers and agents of the bank knew the trust na-

ture of the account against which said check was drawn, and knew that the trustee had no personal right to personal credit therefor, but the bank charged Wichita Royalty Company's account with $15,769.07 and credited the same to the personal account of G. W. Peckham.

51. That the disbursement of the above funds, the charging of Wichita Royalty Company's account therewith and the crediting of same to the personal account of G. W. Peckham was as originally contemplated, and said monies so withdrawn from the trust account and deposited to the account of the trustee was with the knowledge on the part of the officers and agents of plaintiff bank that said funds so on deposit in Wichita Royalty Company's name were trust funds and that there was a fiduciary relationship between G. W. Peckham and the cestui que trust; that the said G. W. Peckham had no right on authority to cause Wichita Royalty Company's account to be charged with any of the above items and had no right to be charged with any of the above items and had no right or authority to receive personal credit therefor and had no right or authority to make disbursement thereof from his private account for purposes personal unto himself.

52. The officers and agents of the plaintiff bank and particularly its executive J. T. Harrell, knew the authority of G. W. Peckham as trustee for Wichita Royalty Company was limited to performing such acts
2313 on behalf of Wichita Royalty Company as came within the purpose of the association, namely the purchase and sale of all royalties and other oil and gas properties.

Marlborough Addition at no time had any real or potential oil and gas value and at no time was considered oil and/or gas property. The bank, its officers, agents and employees, as well as the impleaded defendant J. T. Harrell *weel* knew and/or by the exercise of reasonable

care should have known and/or had knowledge of such facts as if reasonably inquired into would have enabled them to know that G. W. Peckham was wrongfully diverting trust funds to his private account and for his private use without authority therefor, and said officers and agents in permitting said G. W. Peckham to withdraw said funds from Wichita Royalty Company's account for his personal use co-operated with and contributed to the wrongful diversion with full knowledge and/or legal notice that G. W. Peckham was using for his personal benefit trust funds standing in the name of Wichita Royalty Company.

53. The officers and agents of plaintiff bank knew and/or had legal notice of and/or were possessed of knowledge of such facts as if reasonably inquired into would have enabled them to know that the purpose of the said G. W. Peckham in withdrawing funds from Wichita Royalty Company's account and causing the same to be placed in his personal account was four fold namely, first, in part to pay to plaintiff bank a part of his personal indebtedness to that institution; second, in part to purchase and pay for an interest in a joint adventure between the partners of Marlborough Addition and thus reduce the protanto liabilities of the impleaded defendant and the other parties; third, in part to invest in the Harrell, Peckham et al partnership in the
2314 oil business, and fourth, in part to pay his various and sundry debts.

54. That none of the monies so wrongfully diverted from the account of Wichita Royalty Company to the personal account of G. W. Peckham was ever returned to the company, save and except as shown above, and the said G. W. Peckham died in the fall of 1929 wholly insolvent and is alleged by plaintiff bank to have died leaving all of his entire assets hypothecated to the bank as security for the payment of approximately twenty-five thousand dollars, dying with assets wholly insufficient

to discharge even his personally secured debt to the bank and dying without leaving an estate out of which even in part his obligation to repay this defendant can be made, all of which facts were both known to and anticipated by plaintiff bank, its officers, agents and employees, and/or by the exercise of reasonably care should have been known and anticipated at the respective times monies were wrongfully diverted.

55. That the said G. W. Peckham took personal title to an interest in Marlborough Addition and died still possessed with the legal title thereto to the extent of an undivided 1/2 interest, treating said property as his own from and after the Fall of 1925 until his death in 1929, exercising dominion thereover, executing instruments of conveyance thereof in part and in other ways holding himself out to the world at large as the possessor of the title thereto.

56. It is said by those familiar with the facts, that during his lifetime the said G. W. Peckham is reported to have executed a deed of conveyance by the terms of which there was purported to be conveyed to Wichita Royalty Company a joint stock association, of
2315 which the said G. W. Peckham was trustee and as well executive, and undivided 1/2 interest in and to what is known as Marlborough Addition, but cross-complainants allege that the said G. W. Peckham at no time intended the deed to Wichita Royalty Company to be effective; that the same was never delivered; that the said G. W. Peckham intended but to have the same executed, un-recorded, but still available so that in the event of adversity it could be said that a deed had been executed therefor to Wichita Royalty Company, and that the property was that of the Company, but intending as well that should said venture prosper and he be personally in a position to repay Wichita Royalty Company the monies which he had wrongfully diverted from its account, that then he would continue to assert

personal title to said undivided interest, destroy the deed and deny the Wichita Royalty Company any interest therein, being in a position at all times (so he thought) to assert either his ownership thereof or the company's ownerships so making notations upon the voucher checks so that in the event of adversity and his later recording the deed and seeking to put the property off on the Wichita Royalty Company, that he and G. W. Peckham as individuals would profit in the transaction to the extent of $14,176.20.

That said deed was never delivered and was never recorded and was never accepted by Wichita Royalty Company and the same was and is wholly inoperative and is in all things repudiated by Wichita Royalty Company.

57. And in this connection, Wichita Royalty Company says that aside from said wrongful intention of the said G. W. Peckham the trustee was without power and or authority to bind Wichita Royalty Company in the purchase of a townsite addition or any part
2316 thereof in that the sole and only authority of G. W. Peckham was to deal in royalty interests as its name signifies and or other oil and gas properties. The trustee was therefore without power or authority to bind the company by the execution of a deed. The trustee could not deal with himself as an individual in any manner whatsoever and particularly could he not so deal in a matter entirely beyond the purpose of the organization, and had he in face delivered said deed (which is denied) the same was not and could not be effective as a conveyance.

That the existence of said deed was not known to a single stockholder in Wichita Royalty Company, and G. W. Peckham's personal venture in said suburban addition was unknown to every stockholder of the company.

58. Consistent with all the above and at a time subsequent to the execution of said deed by G. W. Peckham to this Company, the said G. W. Peckham continued to treat said property as his own, exercising dominion thereover and contracting with respect thereto, and just before his death joined other parties at interest in the formation of a corporation known as The Texas Investment Company which purported to take over the assets and assume the liabilities of the theretofore partnership of Marlborough Addition, the said G. W. Peckham never intended Wichita Royalty Company to own or possess Marlborough Addition or an interest therein in the event the same should prove profitable intending personally to repay the company monies which he had wrongfully diverted from its treasury and expended by him in the payment of his own interest in said addition, as well as other obligations personal to himself, all with the knowledge of the bank, its officers and agents and/or such notice to them as was sufficient to put them upon
2317 inquiry as that if reasonably inquired into would have disclosed to them such knowledge, and their failure so to inquire was negligence on their part.

59. Upon the formation of The Texas Corporation known as the Texas Investment Company of Wichita Falls, Texas, said corporation assumed the liabilities of the theretofore partnership of Marlborough Addition constituted as above shown, which partnership was then indebted to the plaintiff bank in a substantial sum of money, and upon the death of the said G. W. Peckham. his successor as trustee, in the manner at the time, under the circumstances, and coerced by representations shown in his own separate answer herein, joined in said corporation and accepted stock therein and in turn pledging said stock as security to the plaintiff bank for the corporations debt, and indorsing said corporation's note by subscribing this defendant's name thereto which was ultra vires to the powers of the said trustee beyond the

purposes of the association and null and void with all facts and circumstances herein pleaded well known to the plaintiff bank, its officers and agents.

60. It is perforce of this indorsement that plaintiff brings suit for $14,596.00 as shown by its petition. This defendant is not liable thereon because of all the facts here and elsewhere averred and because; The said E. E. Scannell was wholly without power and/or authority to bind this defendant by indorsing said corporation's note; said trustee was wholly without power to bind this defendant in any attempt to accept stock in said corporation; this defendant had no interest in Marlborough Addition in exchange for which it could receive stock in said corporation, the acts of said former trustee being a legal fraud and in excess of his authority; said indorsement was obtained upon the representations
2318 shown in the separate answer of E. E. Scannell referred to and made a part hereof; said corporation had for its purpose matters wholly foreign to the purpose of this defendant and in no way related thereto, all of which facts were with the knowledge of the officers and agents of said plaintiff bank.

Wichita Royalty Company was never a party to any obligation due by Marlborough Addition as such and/or its constituent members and/or its successor in interest, The Texas Investment Company of Wichita Falls, Texas, until subsequent to the death of the said G. W. Peckham, and under circumstances and because of the representations set up in the separate answer of E. E. Scannell, said successor in trust of this defendant indorsed said corporation's note and there was no consideration whatsoever therefor, and said act was beyond the powers of the said trustee to do and perform and bind this defendant thereby. Said private corporation so succeeding in interest to the partnership of Marlborough Addition was chartered under the laws of Texas for the purpose of the purchase and sale and subdivision of real property in towns, cities and villages and their suburbs, and had naught to

do with royalty and/or other oil and gas interests, and the purposes of said corporation were of such a nature and the purposes of this defendant were of such a character as that no trustee of this defendant could competently contract in the name of this defendant for the acquisition of certificates of stock in said corporation, nor could he competently create a liability upon this defendant by indorsing its name upon the obligations of said corporation, there being no other consideration to support the indorsement and none existing, and the indorsement not being that of this defendant be-
2319 cause of the lack of authority of the agent to bind the principal.

The issuance of certificates of stock in said Texas Corporation by the said J. T. Harrell and others to Wichita Royalty Company (if in fact any certificates were ever issued) was for the purpose of foreclosing all of the matters and things above set out and to obtain the entire assets of said corporation for the individual executives of the City National Bank, namely, J. T. Harrell and J. A. Kemp. Accordingly and at a time when the assets of said Texas Investment Company, successors to Marlborough Addition, exceeded $140,000.00 the said City National Bank alleges that it foreclosed its pledge upon the entire assets of said corporation and obtained title to the same for a consideration of but twenty thousand dollars which in fact was subject to but approximately forty thousand dollars indebtedness against the assets, thus giving to the plaintiff bank a net value thereby in excess of eighty thousand dollars, with the intention thereby to cut off any interest therein of this defendant to foreclose this defendant's right to challenge the recoverability of the wrongful diversion of funds as above set out and for the executives of said bank personally to receive the benefits therefrom.

61. As shown above the said J. T. Harrell and associates were engaged in the oil business as a side line pure-

ly incidental and collateral and in any way connected with the banking business.

Accordingly the said J. T. Harrell and associates (one of whom was as well as executive of the City National Bank at the time) had an interest in royalty which they had negotiated concerning with the said G. W. Peckham, but the Wichita Royalty Company did not have
2320 sufficient funds on deposit with which to pay the substantial price which the said executives wanted for the royalty, so contrary to the theretofore established practice of the bank to take a deed of trust as security for any loan made to the royalty company, the said J. T. Harrell on January 16, 1926, loaned to G. W. Peckham in the name of Wichita Royalty Company, the sum of $15,800.00 and placed the same to the credit of Wichita Royalty Company, and simultaneous therewith though dated two days subsequent thereto, the said G. W. Peckham caused this defendant's check No. 461 to be issued in the principal sum of $15,769.07, payable to the City National Bank of Wichita Falls, Texas, and delivered the same to the said J. T. Harrell who thereupon charged the same against the account of this defendant and disbursed the proceeds thereof between himself and his other partners in the oil business, and while theretofore it had been the policy of the company to buy small royalties from time to time, yet because of the wrongful diversion of its funds into the personal account of G. W. Peckham and his venture into the Marlborough Addition enterprise as above shown, the company was unable, even though with the twenty-five thousand dollars and more subsequently borrowed, to buy any additional properties.

62. That all of the times above mentioned and during all of the transactions above outlined, plaintiff bank, its officers and agents and employees, knew that this defendant was a joint stock association organized for the sole and only purpose of dealing with royalty and other oil and gas properties and had limited the authority of

the trustee thereof to dealings with respect thereto, and that the said respective trustees of this defendant were not at any time nor to any extent authorized
2321 and/or empowered to bind this defendant upon any matter whatsoever, save and except those matters strictly limited to the royalty and/or oil and gas business and possessed with such knowledge and charged therewith as a matter of law because of the record declaration of trust specifically setting out such limitation authority and dealing with said respective trustees in the capacity as such, and thereby possessed with knowledge and charged with notice of the agency of said respective trustees, the said officers and agents of plaintiff bank and the impleaded defendant, T. T. Harrell, all knew that each and every one of the above described transactions whereby monies were charged against this defendant's account and credited to the respective accounts of others and/or diverted from the use of this defendant and beyond the purpose of its organization, was ultre vires; that the funds standing in the name of this defendant in plaintiffs bank were trust funds belonging to some 1300 individuals holding beneficial interest therein as evidenced by certificates; that the purpose of the said G. W. Peckham were as above shown; that the crediting account of the said G. W. Peckham with said respective items would result in the total loss thereof to this defendant and to its stockholders, and that the assets of this defendant would be dissipated and the valuable properties taken by foreclosure, but with such knowledge said officers and agents of said plaintiff bank actively participated with the said G. W. Peckham in each and every one of the various transactions above described and were parties to each and every act of the said G. W. Peckham whereby he became personally obligated to this defendant in the aggregate total as composed of the above items.

63. That the said G. W. Peckham is not made a party hereto for the reason that the subscribing affiant
2322 hereto is informed that the estate of the said G. W. Peckham is insolvent, and is informed that

the City National Bank alleges that it possesses a first and prior lien upon all of the assets of the said G. W. Peckham, deceased, to secure an indebtedness in excess of the value of such assets, but the said J. T. Harrell is solvent and was the executive of the plaintiff bank who negotiated with G. W. Peckham the respective loans above described, credited to the account of this defendant and disbursed with the permission and active participation of the officers and agents of plaintiff bank in the manner and for the purposes above shown, all of which funds were co-mingled with the personal funds of others and are beyond tracing and have been dissipated with plaintiff bank profiting thereby to the extent above shown, and with the said J. T. Harrell's personal liability upon the Highland Irrigation Company's notes being substantially reduced thereby.

64. That the items for which the said plaintiff bank and the impleaded J. T. Harrell are jointly and severally liable to this defendant are reflected in summarized form upon an exhibit attached hereto and made a part hereof.

65. That the twenty-two thousand dollar note sued upon is in renewal of the original loans above described as having been created January 16, 1926, and March 6, 1926, respectively.

66. Cross complainants say that the difference between the monies deposited in plaintiff bank and those properly withdrawn therefrom with authority of Wichita Royalty Company totals the aggregate amount shown on the attached summarized statement for which Wichita Royalty Company sues.

67. Plaintiff is given notice to produce upon the trial hereof all original books, papers, accounts and
2323 instruments in writing relating to or concerning Marlborough Addition and or The Texas Investment Company of Wichita Falls, Texas, original

ledger sheets both direct and contingent showing the liability of account to plaintiff of G. W. Peckham as an individual, of Marlborough Addition and/or the account by whatever name listed showing the Marlborough transactions and/or The Texas Investment Company of Wichita Falls, Texas, direct liability ledger of Wichita Royalty Company and the deposit account of Wichita Royalty Company, G. W. Peckham, Marlborough Addition, The Texas Investment Company, evidence of such security to plaintiff by G. W. Peckham as plaintiff claims existed as security to it in the payment by Peckham of his debt to the bank; original deeds of trust executed by this defendant given as security to plaintiff bank for any item of indebtedness.

68. Cross compliainants say that not a single stockholder of Wichita Royalty Company ever knew of any of the transactions between G. W. Peckham as an individual with himself as trustee of the Wichita Royalty Company, and no stockholder ever knew of any of the facts herein alleged, said facts being withheld by the said G. W. Peckham from the stockholders of the trust.

69. That none of the checks drawn on and payable to the plaintiff bear the indorsement of the City National Bank.

70. Cross complainants say plaintiff bank, its officers, agents and employees were guilty of negligence in the acts of omission and commission herein elsewhere pleaded, and said bank, its officers, agents and employees failed to observe that degree of care toward Wichita Royalty Company, which an ordinary prudent banker would have used under the same or similar circumstances; and all of the acts and omissions upon the part of said bank, its agents and employees as herein elsewhere averred, proximately resulted in Wichita Royalty Company's loss of the monies herein sued for, and an ordinary prudent banker possessed of

2324

the knowledge which plaintiff officers and agents had would have reasonably anticipated the results that have followed; the plaintiff bank in the particulars herein elsewhere mentioned breached its contract with its depositors the Wichita Royalty Company, and but for its active participation with the trustees in *his* wrongful acts the loss would not have occurred, Wichita Royalty Company's loss proximately resulting from the co-operation and or contribution of the plaintiff bank, its officers and agents to the acts and conduct of the trustee.

31. Cross complainants have and do not disclaim all interest in Marlborough Addition and or in Texas Investment Company of Wichita Falls, Texas, and make such tenders and offer to do and perform such equities as to the Court may seem proper.

The State of Texas,
County of Wichita.

E. E. Scannell, being duly sworn on oath says that he is a stockholder in and the present trustee of Wichita Royalty Company, and that the facts above averred are true.

E. E. SCANNELL.

Sworn to and subscribed before me this the 9th day of April, A. D. 1931.

PAULINE NOLTE,
Notary Public, Wichita County, Texas.

(Seal)

Wherefore having fully answered and having fully set out the substantial facts with respect to the many transactions herein at issue, the plaintiff and the inter-pleaded defendant J. T. Harrell having heretofore appeared and answered herein, cross complainants pray that plaintiff bank take nothing as against them; that Wichita Royalty Company recover of and from the City National Bank of Wichita Falls, Texas, and

2325

from J. T. Harrell, jointly and severally, the respective sums of money above shown, with interest thereon at the legal rate from and after the respective times said monies were charged against the account of Wichita Royalty Company and/or that said items plead be credited upon the twenty-two thousand dollar obligation sued upon by plaintiff as of the several times of the charging by plaintiff of said respective checks to Wichita Royalty Company's account, with judgment for the balance of monies so charged against said account, with interest thereon from and after the respective times of withdrawal; cross-complainants further pray for costs of suit, interest as is provided by law, and for general and special, legal and equitable relief, and as in honor bound will ever pray.

KILGORE & ROGERS,
Attorneys for Wichita Royalty Company.

Summary of Pleading Wichita Royalty Company in Account with George W. Peckham and/or The City National Bank and/or J. T. Harrell.

Check	Par	Date	Deposited to Account of	Dr.	Cr.
	13	1- 1-26	WRC	$15,000.00	
	13	3- 1-36	WRC	25,000.00	
427	47	10- 8-25	GWP		$5,500.00
451	48	12-28-25	GWP		1,250.00
458	49	1-11-26	GWP		5,000.00
461	50	1-18-26	GWP		15,769.07
478	15	3- 6-26	GWP		17,623.70
479	16	3-10-26	GWP		6,000.00
485	17	3-31-36	GWP		7,500.00
495	31	4-23-26	CNB		300.00
503	18	5-20-26	GWP		3,000.00
506	31	6- 2-26	CNB		500.00
507	19	6- 2-26	GWP		1,500.00

Check	Par	Date	Deposited to Account of	Dr.	Cr.
510	20	6-16-26	GWP		4,500.00
519	21	7-15-26	GWP		1,000.00
521	31	7-17-26	CNB		300.00
525	22	8- 2-26	GWP		4,000.00
531	31	8-30-36	CNB		500.00
532	23	8-27-26	GWP		4,357.58
540	31	10-19-26	CNB		300.00
541	41	10-14-26	GWP		10,000.00
550	24	11-20-26	GWP		7,500.00
	32	11-26-26	CNB	$500.00	
554	42	12- 2-26	GWP		1,500.00
556	25	12-22-26	GWP		700.00
556-A	26	1- 4-27	GWP		538.16
557	43	12-15-26	GWP		1,920.00
569	31	1-15-27	CNB		300.00
571	27	1-19-27	GWP		2,000.00
579	28	2-19-27	GWP		2,500.00
582	33	3- 8-27	GWP		500.00
583	44	3-16-27	GWP		301.82
584	31	3- 3-27	CNB		500.00
591	40	3-23-27	GWP		2,000.00
599	31	4-23-27	CNB		300.00
516	31	6- 8-27	CNB		500.00
620	34	6-18-27	GWP		1,200.00
628	31	7-16-27	CNB		1,500.00
635	35	8-16-27	GWP		1,500.00
	32	8-31-27	CNB	$500.00	
650	36	10-15-27	GWP		2,400.00
	32	10-19-27	CNB		1,336.00
657	37	11-25-27	GWP		1,800.00
	32	11-25-27	CNB	1,500.00	
	46 (EC)	12- 5-27	GWP		2,400.00
	46 (EC)	1- 9-28	GWP		1,200.00
	46 (EC)	1-25-28	GWP		1,224.00
682	31	1-28-28	CNB		2,000.00
	45 (CC)	2-15-28	GWP		6,000.00
	32	2-15-28	CNB	3,485.33	

Check	Par	Date	Deposited to Account of	Dr.	Cr.
	36 (EC)	2-29-28	GWP		1,224.00
710	38	4-23-28	GWP		1,850.00
717	31	5-17-28	CNB		220.00
721	39	6- 1-28	GWP		424.66
733	31	7-23-28	CNB		220.00
752	31	9-27-28	CNB		424.66
768	31	12- 4-28	CNB		2,000.00
791	31	2-23-29	CNB		1,500.00
814	31	6- 8-29	CNB		1,500.00
824	31	7-15-29	CNB		212.49
836	31	8-29-29	CNB		1,000.00
856	31	11-23-29	CNB		1,500.00
880	29	1-25-29	GWP		1,500.00
890	31	2-24-30	CNB		1,000.00
898	31	4-10-36	CNB		1,000.00
908	30	5-14-30	GWP		500.00
920	31	6-18-30	CNB		1,500.00
930	31	7-16-30	CNB		
				$45,985.33	$153,151.56

Excess of payments over receipts $107,166.23

Indorsed: Number 24549-B, City National Bank of Wichita Falls, Texas, vs. Wichita Royalty Company, et al. Second Amended Original Answer, Cross Action and Inter-pleader of Wichita Royalty Company. Filed: April 27, 1931, Mrs. A. B. Eichelberger, District Clerk, Wichita County, Texas.

2329 JUDGMENT.

Filed February 15, 1932.

In the 78th District Court of Wichita County, Texas.

City National Bank of Wichita Falls, Texas.
vs.
Wichita Royalty Company, Et Al.

February 25, A. D. 1932.

On the 15th day of February A. D. 1932, this cause was regularly called for trial, Honorable Vincent Stine, Judge of the 97th Judicial District of Texas, presiding in exchange with Honorable W. W. Cook, Judge of the 78th Judicial District of Texas. Thereupon, the plaintiff, the City National Bank of Wichita Falls, appeared by its attorney and announced ready for trial. Thereupon, came the defendants, the Wichita Royalty Company and its trustee, whose trustee is E. E. Scannell, by their attorney and announced ready for trial. Also came the City National Bank of Wichita Falls and J. T. Harrell, defendants in the cross action brought by the Wichita Royalty Company and announced ready for trial. Also came E. E. Scannell by person and by attorney, and as representative of the shareholders of the Wichita Royalty Company and announced ready for trial. Also came the interpleader defendants, to-wit: Flora A. Kemp and Chas. I. Francis, independent executors under the last will and testament of J. A. Kemp, deceased; W. H. Peckham, individually and as administrator of the estate of G. W. Peckham, deceased. All parties being in Court in person and by attorneys, plaintiff and defendants and interpleaded defendants, all announced ready for trial; and a jury having been demanded, thereupon came twelve good and lawful men, to-wit: *A. H. Miller* and eleven others, who being duly selected, sworn and impaneled to try said cause; and after hearing the pleadings, the evidence

and argument of counsel returned into Court on the 25th of February 1932 their verdict, in response to the peremptory instruction given to them by the Court, which is as follows, to-wit:

2330 Gentlemen of the Jury:

You are instructed to return a verdict in favor of the plaintiff and a ainst the defendant, Wichita Royalty Company, upon the following form:

"We, the jury, find in favor of the plaintiff, the City National Bank of Wichita Falls, Texas, and against the Wichita Royalty Company for the amount of the note of $22,000.00, with interest and attorney's fees which note is dated June 26, A. D. 1930, signed by the Wichita Royalty Company and payable to the City National Bank.

We, the jury, further find in favor of the City National Bank and against the Wichita Royalty Company for the sum of $14,596.00, being one-half of the balance due upon the note signed by the Texas Investment Company and payable to the order of the City National Bank and indorsed by the Wichita Royalty Company, J. T. Harrell and J. A. Kemp.

We, the jury, further find in favor of the plaintiff, the City National Bank, and the defendant, J. T. Harrell, upon the cross action of the defendant, the Wichita Royalty Company.

We, the jury, further find in favor of the Defendants, Flora A. Kemp and Chas. I. Francis as independent executors of the Estate of J. A. Kemp, deceased, and W. H. Peckham individually and as administrator of the Estate of G. W. Peckham, deceased, upon the cross action filed against them by the City National Bank and J. T. Harrell; and we further find in favor of J. T. Harrell and against the City National Bank on the cross action filed against him by said bank.

2331 We further find in favor of the defendant, E. E. Scannell and against the City National Bank upon the indebtedness sued for.

VINCENT STINE,
Judge Presiding.

We, the jury, hereby return into Court our verdict as hereinabove directed.

A. H. MILLER,
Foreman.

February 25, 1932.

Which verdict was returned by the Court and ordered filed. To which action of the Court, in giving the jury a peremptory instruction, the defendant Wichita Royalty Company and the cross-complainants, Wichita Royalty Company and its shareholders, in open Court duly excepted.

It is, Therefore, Ordered, Adjudged and Decreed by the Court that the plaintiff, the City National Bank of Wichita Falls, a corporation, do have and recover of and from the defendants, Wichita Royalty Company and E. E. Scannell, its trustee, as such trustee but not personally, the sum of $43,349.10, being the aggregate amount of the principal, interest and attorneys' fees due upon the notes sued upon, to-wit: One note dated June 26, 1930, for $22,000.00, and one-half of the balance of the note of the Texas Investment Company indorsed by the Wichita Royalty Company.

It is Further Ordered, Adjudged and Decreed by the Court that this judgment bear interest at the rate of 8% per annum from date until paid, and that execution may issue against any of the assets owned or held by the Wichita Royalty Company and/or its trustee as such.

It is Further Ordered, Adjudged and Decreed that the defendants, Wichita Royalty Company, and or
2332 E. E. Scannell, its trustee, take nothing against the plaintiff, the City National Bank of Wichita Falls, and the interpleaded defendant, J. T. Harrell, upon the interpleader and cross action of the Wichita Royalty Company; and that the said plaintiff, The City National Bank of Wichita Falls, and J. T. Harrell go hence without day and recover of and from the said Wichita Royalty Company its cost in this behalf incurred, for which let execution issue.

It is Further Ordered, Adjudged and Decreed that the plaintiff, the City National Bank, take nothing against E. E. Scannell, individually, and that E. E. Scannell go hence without day and recover of and from the plaintiff his costs.

It Is Further Ordered, Adjudged And Decreed by the Court that the plaintiff take nothing against the defendants, Flora A. Kemp and Chas. I. Francis, independent executors under the last will and testament of J. A. Kemp, deceased, and/or against W. H. Peckham, individually and as administrator of the estate of G. W. Peckham, deceased, and J. T. Harrell, the interpleaded defendants, but that the said interpleaded defendants, Flora A. Kemp and Chas. I Francis, executors aforesaid, W. H. Peckham, individually and as administrator aforesaid, and J. T. Harrell go hence without day and recover all costs in this behalf incurred against the plaintiff herein.

It Is Further Ordered, Adjudged And Decreed by the Court that the interpleaded defendant, J. T. Harrell, take nothing against the defendants, Flora A. Kemp and Chas. I. Francis, independent executors under the last will and testament of J. A. Kemp, deceased, and/or against W. H. Peckham, individually and as administrator of the

estate of G. W. Peckham, deceased; but that such defendants, Flora A. Kemp and Chas. I. Francis, executors aforesaid, and W. H. Peckham, individually and as administrator aforesaid, go hence without day with their cost, insofar as the cross action of J. T. Harrell is concerned.

2333

It Is Further Ordered, Adjudged And Decreed by the Court that all relief except herein specifically granted be and is hereby denied, and that the officers of the Court have execution against the respective parties, plaintiff or defendants, for the respective costs incurred by such parties.

To which action of the Court the defendant, Wichita Royalty Company and cross complainants, Wichita Royalty Company and its shareholders, in open Court duly excepted, and gave notice of appeal to the Court of Civil Appeals for the Second Supreme Judicial District of Texas at Fort Worth, Texas.

This February 25, 1932.

VINCENT STINE,
Judge Presiding.

O. K. form:
GUY ROGERS,
O. K. MORROW,
JOHN DAVENPORT.

Indorsed: No. 24549-B, City National Bank vs Wichita Royalty Company. Judgment Recorded in Volume 8 page 472, Minutes of the 78th District Court, Wichita County, Texas. Filed: February 25, 1932.

2334 CITATION.

Filed June 18, 1936.

No. 24549-A.

The State of Texas.

The Sheriff or any Constable of Wichita County, Texas, Greetings:

You Are Hereby Commanded To Summon The City National Bank of Wichita Falls, Texas, a corporation, City National Bank in Wichita Falls, Texas, a corporation, J. T. Harrell individually and as Trustee of The City National Bank of Wichita Falls, Texas, W. H. Peckham administrator of the Estate of G. W. Peckham, deceased, Texas Investment Company, a corporation, E. A. Deaton, L. H. Cullum, Leslie Humphrey, Tarlton Morrow, Jack Jeffus, Oral Jones, Frank Kell, Joe Kell, J. J. Perkins, C. W. Snider and F. P. Timberlake to be and appear before the Honorable 30th District Court of Wichita County, Texas, at the next regular term thereof to be holden at the Court House in Wichita Falls, Texas, on the 13th day of July, 1936, then and there to answer the Third Amended Original Answer, Cross Action and inter-pleader of Wichita Royalty Company and E. E. Scannell, its trustee, filed June 18th, 1936, in a suit in said Court wherein The City National Bank of Wichita Falls is plaintiff, Wichita Royalty Company, a trust estate, E. E. Scannell, individually and as trustee, Guy Rogers individually and as trustee under the will of L. B. Rogers, deceased, Chas. L. Black, W. H. Peckham administrator of the estate of George W. Peckham, deceased, the Humble Oil & Refining Company, a corporation, and The Texas Company, a corporation, are defendants, and wherein by said Third Amended Original Answer, Cross Action and Interpleader so filed by Wichita Royalty Company and E. E. Scannell its trustee, The City National Bank of Wichita Falls, Texas, City National Bank in Wichita Falls,

Texas, both corporations J. T. Harrell, individually and as trustee for The City National Bank of Wichita
2335 Falls, Texas, W. H. Peckham as Administrator of the Estate of George W. Peckham, deceased, William Peckham and George Peckham, minor sons of G. W. Peckham, deceased, Robert W. Peckham, Mrs. Hazel D. Peckham, Texas Investment Company, a Corporation, E. A. Deaton, L. H. Cullum, Leslie Humphrey, Tarlton Morrow, Jack Jeffus, Oral Jones, Frank Kell, Joe Kell, J. J. Perkins, C. W. Snider, E. P. Timberlake, the Humble Oil & Refining Company, a corporation, The Texas Company, a corporation, and the Continental Oil Company, a corporation, are sued by Cross-action and Interpleader, the file Number of said suit being 24549-B, and the nature of said amended answer, Cross-Action and Inter-pleader being as follows, to-wit:

* * * *

(Same being omitted as per agreement between attorneys to shorten the record filed in U. S. Dist. Court July 14, 1937.)

* * * *

Sheriff's Return.

Came to hand on the 19th day of June, A. D. 1936 at 10 o'clock A. M., and executed the 19th day of June A. D. 1936 by delivering to The City National Bank of Wichita Falls, Texas, a corporation, by serving J. T. Harrell, its President; The City National Bank in Wichita Falls, Texas, a corporation, by serving J. T. Harrell, its President; J. T. Harrell, individually and as Trustee of the City National Bank of Wichita Falls, Texas; W. H. Peckham, administrator of the estate of G. W. Peckham, deceased; Texas Investment Company, a corporation, by serving J. T. Harrell, its Vice-Pres; E. A. Deaton, Jack Jeffus, Frank Kell, Joe Kell, J. J. Perkins, C. W. Snider, E. P. Timberlake, Leslie Humphrey, and this writ was further
2336 executed on the 20th day of June, 1936, by delivering to Oral Jones, L. H. Cullum and Tarlton

Morrow, the within named defendants, each in person, a true copy of this writ.

Fees—Serving 17 copies	$17.00
Mileage 4	.30
Total	$17.30

PAT ALLEN,
A. J. CHAMBERS,
Deputy Sheriff, Wichita County, Texas.

Indorsed: Number 24549-A, The City National Bank of Wichita Falls, Texas vs. Wichita Royalty Company, et al Citation. Issued: June 18, 1936. R. L. Sanderford, District Clerk, Wichita County, Texas, by Edna Berner, Deputy.

NOTICE TO SERVE NON-RESIDENT DEFENDANTS HAZEL D. PECKHAM, ET AL.

2337 Filed July 11, 1936.

In the 30th District Court of Wichita County, Texas.

No. 24549-A.

The State of Texas.

To: Hazel D. Peckham, Wm. Peckham, Geo. Peckham, El Paso County, Colorado: Greeting:

Whereas, Wichita Royalty Company, a trust estate, and E. E. Scannell, its Trustee, of Wichita Falls, Wichita County, Texas, did on the 18th day of June, 1936, file in the 30th District Court of Wichita County, State of Texas, their Third Amended Original Answer, Cross-Action and

Inter-Pleader, in a suit in said Court, No. 24549-A on the Civil Docket of said Court wherein the City National Bank of Wichita Falls, Texas, is plaintiff, Wichita Royalty Company, a trust estate, E. E. Scannell, individually and as trustee, Guy Rogers individually and as Trustee under the will of L. B. Rogers, deceased, Chas. L. Black, W. H. Peckham, administrator of the estate of George W. Peckham, deceased, the Humble Oil & Refining Company, a corporation, and The Texas Company, a corporation, are defendants, and Wherein by said Third Amended Original Answer, Cross-Action and Interpleader so filed by Wichita Royalty Company, and E. E. Scannell, its Trustee, The City National Bank of Wichita Falls, Texas, City National Bank in Wichita Falls, Texas, both corporations, J. T. Harrell, individually and as Trustee for The City National Bank of Wichita Falls, Texas, W. H. Peckham as administrator of the estate of George W. Peckham, deceased, William Peckham and George Peckham, minor sons of G. W. Peckham, deceased,
2338 Robert W. Peckham, Mrs. Hazel D. Peckham, Texas Investment Company, a corporation, E. A. Deaton, L. H. Cullum, Leslie Humphrey, Tarlton Morrow, Jack Jeffus, Oral Jones, Frank Kell, Joe Kell, J. J. Perkins, C. W. Snider, F. P. Timberlake, the Humble Oil & Refining Company, a corporation, The Texas Company, a corporation, and the Continental Oil Company, a corporation, are sued by Cross-action and Inter-pleader, and the Nature of said Amended Answer, Cross-action and Interpleader being substantially as follows, to-wit—

As fully set out in the Defendants Third Amended Original Answer, Cross-action and Interpleader now on file in this office a certified copy of which accompanies this notice, describing more fully the demands of the Defendant to which reference is here made.

And Whereas, the said Amended Answer, Cross-action and Interpleader will be heard by the said 30th District Court of Wichita County, Texas, at Wichita Falls, Texas,

on the second Monday in July A. D. 1936, the same being the 13th day of July A. D. 1936.

These are Therefore, to require you to appear at the time and place above stated, and answer said Defendants Third Amended Original Answer, Cross-action and Inter-pleader, of which said Defendants Third Amended Original Answer and Interpleader, a certified copy accompanies this notice.

Given under my hand and seal of said Court, at office in Wichita Falls, Texas, this the 29th day of June, 1936.

R. L. SANDERFORD,
(Seal) District Clerk, Wichita County, Texas.
By EDNA BERNER,
Deputy.

2339 Return.

State of Colorado,
County of El Paso.

Personally Appeared before me, the undersigned authority R. C. Glasier, who being by me duly sworn, deposes and says: That on the 2nd day of July, 1936, at 10:00 o'clock A. M., in Colorado Springs, County of El Paso, State of Colorado, he delivered to Hazel D. Peckham, William Peckham, and George Peckham, the Defendants each in person, a true copy of this Notice, with a certified copy of the Plaintiff's Petition accompanying same; and further, that he is an adult male, and is in no manner interested in this suit.

R. C. GLASIER.

Sworn to and subscribed before me, this 2nd day of July A. D. 1936.

(Seal) WARREN H. SMITH,
Notary Public.

My commission expires Oct. 5, 1936.

Indorsed: Number 24-549-A, The City National Bank of Wichita Falls, Texas, a corporation vs. Wichita Royalty Company, et al. Notice to Serve Non-Resident Defendant. Filed *June* 11, 1936, R. L. Sanderford, District Clerk, Wichita County, Texas, by Kathryn Exley, Deputy.

INTERROGATORIES PROPOUNDED TO J. J. PERKINS BY THE WICHITA ROYALTY COMPANY AFTER REMOVAL UNDER RULE 58 IN EQUITY.

Filed in U. S. District Court August 28, 1936.

2340 City National Bank of Wichita Falls, Texas.
vs. No. 358 In Equity.
Wichita Royalty Company, et al.

Wichita Royalty Company and E. E. Scannell, its trustee, under Equity Rule 58, propound the following interrogatories to be answered by the impleaded defendant J. J. Perkins:

1. Are you the J. J. Perkins who is a Director in the City National Bank of Wichita Falls, Texas?

2. Over what period of time have you been such Director?

3. During such period were you generally familiar with the operations of the Bank?

4. During 1923 and subsequent years did such Bank have a Committee to consider and pass upon applications for loans?

5. Was such Committee composed of members of the Board of Directors of said Bank?

6. How often did the personnel of said Committee change?

7. How often did it meet?

8. Give in fullest detail the purpose, function, policy and practices of said Committee.

9. Were all applications to the Bank for loans, whether large or small, whether secured or unsecured, submitted to the Committee for consideration?

10. To what extent did the Board of Directors leave to J. T. Harrell the making of loans and their renewal without the consideration and approval by said Committee?

2341 11. To what extent, if any, did said Committee consider and pass on the renewal of an existing loan?

12. With respect to a customer of the Bank who had an established credit rating, was J. T. Harrell authorized to conclude a loan with such customer without first getting it approved by the Board?

13. Did J. T. Harrell conclude any loans without having the application first submitted to and approved by the Committee?

14. To what extent did the Committee govern the renewal of existing paper?

15. Were minutes or memoranda kept of the meetings of such Committee? If so, kindly attach such minutes or memoranda, showing the record of the Board's action with respect to loans made by the Bank to Wichita Royalty Company and/or G. W. Peckham during 1923 and subsequent years.

16. Into what matters did the Committee inquire in determining what action to take upon an application for a loan? Detail fully.

17. In considering such application for a loan, did the Committee ask for and obtain a financial statement in writing of the Bank's proposed creditor?

18. Kindly attach to replies as your answer hereto, all financial statements given to the Bank by Wichita Royalty Company and by George W. Peckham during 1923 and subsequent years.

19. If you have not attached such statements, then answer in detail why you have not done so.

20. In passing upon an application for a loan did the Committee undertake to ascertain how much the proposed creditor already owed the Bank?

21. Did said Committee inquire as to what collateral, if any, was to be given?

2342 22. Did said Committee inquire as to who was to indorse said obligation?

23. Did said Committee inquire into and obtain a financial statement in writing of the proposed indorser upon a proposed loan?

24. As to a loan of from $10,000.00 to $50,000.00 did said Committee ordinarily inquire and ascertain the purpose for which the money was desired by the proposed creditor and whether all of the funds sought to be borrowed would be needed for such purpose?

25. Did said Committee consider whether the purpose for which the loan was sought was probably a sound financial purpose, from the standpoint both of borrower and the Bank?

26. Did the Committee ordinarily inquire into greater detail as to the purpose of the loan, the ability of the borrower to repay, and the soundness of the entire transaction with respect to a loan of from $10,000.00 to $50,000.00 than with respect to a small loan?

27. If you have stated that the Committee did not inquire into all or any of the above, then kindly state as to what, if anything, the Committee did inquire, and how it determined whether the Bank should make the loan.

28. Did the Committee generally inquire of the executive officer presenting the application for loan as to his view with respect to whether or not the loan should be made?

29. Did the Committee inquire of the executive officer presenting the application as to whether such officer or any other officer was personally interested in business ventures with the proposed borrower, either as to investments theretofore made or to be made with the proceeds of the loan?

30. Did you, while serving on such Committee, know or believe that J. T. Harrell was interested with G. W. Peckham in the venture known as Marlborough Addition?

2343 31. Did the Committee ordinarily attach weight to such executive officer's recommendation as to whether or not the loan should be approved?

32. In your opinion, as a banker of long experience and as a businessman of vast experience, what facts make a loan good, doubtful or bad? Answer fully.

33. Should an application be from an agent to borrow money in the name of his principal, did the Committee inquire into the authority of the agent to bind his

principal by the execution of a note for the purpose for which the funds were to be used?

34. What inquiry, if any, did the Committee make with respect to the authority of G. W. Peckham to borrow money in the name of Wichita Royalty Company?

35. As a result of such inquiry, if any, did the Committee ascertain that Peckham was trustee of Wichita Royalty Company by a virtue of a recorded Declaration of Trust?

36. If you have answered Interrogatory No. 35 yes, then did such Committee procure and read such Declaration of Trust or obtain advice from an executive officer of the Bank that such written instrument had been read?

37. Did the Committee or within your knowledge the bank obtain legal advice as to the authority of Peckham to borrow money in the name of Wichita Royalty Company and for what purpose could he so borrow? If so, when was such advice given and by whom, and if in writing, attach such opinion to your answer.

38. Were you a member of and in attendance upon such Committee at any time or times when applications for loans or renewals were made by Wichita Royalty Company, G. W. Peckham, Marlborough Addition, Texas Investment Company and/or J. T. Harrell? Explain fully.

39. If you have answered question No. 38 yes, then detail what inquiry the Committee made with re-
2344 spect to each application and what information the Committee obtained. Detail fully.

40. What was said in your presence by officers and executives of the Bank or its said Committee with respect to Wichita Royalty Company's loan lingering in the

Bank as a liability due the Bank over a period of years without ever being reduced below $25,000.00?

41. What was said in your presence by officers and executives of the Bank or its said Committee with respect to G. W. Peckham's loan lingering in the Bank as a liability due the Bank over a period of years without ever being reduced below $20,000.00?

42. Though there were times when you were not a member of the Committee, did you ever, during such periods, make inquiry of the members thereof or of executives of the Bank as to the condition of the liabilities either of Wichita Royalty Company, Marlborough Addition, J. T. Harrell, George W. Peckham, or Texas Investment Company? Answer what inquires were made and what advice was given and what discussion was had with respect to these pending liabilities due the Bank.

43. During 1923 and subsequent years did the Bank ordinarily suffer a $10,000.00 to $50,000.00 obligation due it to be renewed from quarter to quarter over a period of years without being reduced below $25,000.00 at any tone time and without demanding and receiving security and additional security from time to time and an exact ascertainment of the existing facts as to why such indebtedness was not liquidated?

44. Did you at any time during or after 1923, either as a member of said Committee or as a Director of said Bank, or as a stockholder thereof, ever have called to your attention the indebtedness reflected upon the Bank's books as being due by Wichita Royalty Company and George W. Peckham?

2345 45. If so, then answer in detail when and how many times the same was discussed by you and others, between whom such discussions were had, the substance of what was said, and what you recommended

with respect thereto, and how your recommendations were acted upon. Answer fully.

46. Was it the custom and practice of executives of the Bank to renew each sixty or ninety days a large indebtedness over a period of years without the Committee's knowledge?

47. Was such a loan so renewed by such an officer without the Committee's approving such renewals?

48. If the Committee did approve such renewals then would they go into the same facts as you have detailed above with respect to an original loan?

49. If they did not go into such facts, then into what facts did the members of the Committee go?

50. Was such Committee compensated for attending meetings of the Committee and, if so, how much per member per meeting?

51. Give the personnel of such Committee during 1923 and subsequent years, detailing what specific period of time each member of the Board of Directors served as a member of such Committee.

52. Describe in detail the financial conditions prevailing in 1930 and subsequent years over the United States and in Wichita Falls in particular.

53. When, during such period, did the value of the assets of the City National Bank of Wichita Falls begin to decrease and over what period of time did they continue to decrease?

54. When, during such period of time, did there begin a gradual withdrawal of deposits from said City National

Bank of Wichita Falls and over what period of time did such withdrawals continue?

55. Prior to the beginning of such period of financial depression, what were the total deposits of the City National Bank of Wichita Falls?

2346 56. To what extent were such deposits reduced during such period and when did such deposits reach their lowest amount?

57. When, during such period, did it become apparent to the officers and directors of said Bank that additional funds would be needed by said Bank in order for it to continue in business under the conditions then prevailing?

58. When, during such period, did you, as a director, consider that unless new funds were placed in the Bank, it would not be able long to withstand the continuance of such withdrawals?

59. What action did the officers and directors of the Bank take to meet such situation?

60. During such period of time and when such withdrawals were continuing, did representatives of the Banking Department call to the Bank's attention its need for additional funds to restore its impaired capital? Kindly attach as your answer hereto all reports of National Bank Examiners made of the City National Bank during 1930 and subsequent years. If you have not done so, explain why you have not.

61. Did the City National Bank of Wichita Falls, during 1930 and subsequent years, ever borrow in its own name as principal, from The First National Bank of Wichita Falls Texas any sum or sums of money?

62. If you have answered No. 61 yes, then attach hereto as your answer original note executed by said Bank to

obtain such loan. If you have not done so, then answer why you have not and give the amount of such loan, the date when made and what collateral and/or securities and/or guaranty and/or indemnity, if any, was given to The First National Bank to secure the payment of its loan to said City National Bank.

63. If you have answered that the City National Bank gave to The First National Bank collateral to secure a loan made to said City National Bank, then explain in detail whether such collateral is still with The First
2347 National Bank and if not, when and how and to whom and for what consideration did The First National Bank release and deliver such collateral, attaching as your answer hereto a copy of any pledge, agreement or contract of indemnity or guaranty that may have been made.

64. Did any of the officers, directors or stockholders of the City National Bank during 1930 and subsequent years, borrow from The First National Bank any sum or sums of money?

65. If you have answered yes to No. 64, then what was the purpose of such borrowers in obtaining such funds and what was done with the proceeds of such loans?

66. What collateral, if any, did such borrowers give to The First National Bank and if any collateral was given, what has become of such collateral? Explain fully.

67. Did not the proceeds of the loan so made with The First National Bank go into the City National Bank of Wichita Falls?

68. If you have answered yes to No. 67, then for what purpose, under what agreement, with what understanding

and upon what security, if any, were such funds so placed with the City National Bank? Explain fully, attaching as a part of your answer all memoranda or instruments in writing describing such transaction or evidencing the agreement and understanding of said bank and its said officers, directors and stockholders, or any matter pertaining to such transaction. If you have not so attached such memoranda, explain why you have failed to do so.

69. If you have answered that you, with other officers, directors or stockholders of City National Bank borrowed from The First National Bank any sum or sums of money to place in the City National Bank of Wichita Falls, then have those who so bororwed such money from The First National Bank paid to said Bank the money so borrowed?

2348 70. If you have answered No. 59, yes, then what payment did you make to The First National Bank? Attach hereto as your answer the check or checks whereby you paid your part thereof.

71. Was such loan, if any, so obtained by you the from The First National Bank ever paid in whole or in part by any other person, firm or corporation and, if so, by whom, when and in what manner was payment made?

72. Are you and the other makers of such original loan from The First National Bank still liable in whole or in part upon the loan so made to said individuals by The First National Bank of Wichita Falls and if not liable for any amount thereof, then when and how and to what extent and in what manner were such makers released of liability thereon? Give amounts, dates and full details and attach as a part of your answer any and all memoranda in writing of every character concerning such transaction.

73. Did you, with other officers or stockholders or directors of City National Bank of Wichita Falls, during

1930 and subsequent years, ever place with the City National Bank any sum or sums of money to strengthen its financial condition?

74. During 1930 and subsequent years did you, and within your knowledge, other officers, directors or stockholders of City National Bank ever place with said Bank, under any plan, contract or agreement other than the usual and customary deposit contract of a customer, any sum or sums of money? If so, please state who so advanced such sums, whence such funds were obtained, under what contract, understanding or agreement they were placed with said Bank, what promise for repayment was made by the Bank, what collateral, if any, was pledged as security therefor, and the facts relating to the placing of such moneys in said bank. Explain fully, attaching all memoranda relating thereto.

2349 75. Have you, and within your knowledge, other officers, directors and stockholders so advancing money to the City National Bank of Wichita Falls, been repaid in whole or in part for such sum or sums so advanced? Give dates and amounts and method of the bank's repayment of any sum or sums and the method and means used by said Bank with the consent of you and other officers and directors whereby such sums were repaid, whether assumes by it or placed to the credit of obligations due the bank by such persons so advancing the money or by the transfer of security or in any other way. Detail fully, attaching all memoranda evidencing the transaction or any part thereof.

76. Was not the City National Bank of Wichita Falls forbidden by federal Authority over National Banks to reopen its doors after March 1, 1933?

77 Kindly attach as your answer hereto all telegrams, letters and other communications sent by City National Bank of Wichita Falls to Federal Authority in charge

of the Reopening of Banks in March, 1933, as well as all such communications from such Authority. If you have not done so, kindly explain fully why you have not.

78. Did you, as a director, in March, 1933, when said City National Bank was closed by executive proclamation and before the end of the banking holiday, not know that City National Bank of Wichita Falls, Texas, would not under existing conditions again open its doors for business?

79. Is it or not true that when in March, 1933, all national banks were officially closed, no bank was permitted to reopen except upon federal authority after determination by governmental agencies that such bank was a solvent condition?

80. Is it or not true that City National Bank of Wichita Falls was never given federal authority to reopen for business subsequent to its closing March 4, 1933?

2350 81. Kindly detail and explain fully why it was that, as an interested party, you joined in the formation of a new "in" bank to succeed an old "of" bank and in the liquidation of such old and established banking institution in this vicinity?

82. Why was it that the old established bank was not continued as a going concern, but placed in voluntary liquidation in March, 1933?

83. Kindly detail all discussions had between you and other members of the Board of Directors of City National Bank of Wichita Falls as to what should be done toward the liquidation of the old bank and the organization of a new bank, identifying the persons with whom you talked, the substance of the conversations had between you and the conclusion reached as to the reasons why it was neces-

sary and/or advisable to liquidate the old bank and to organize a new bank.

84. To what extent and in what amount and because of what condition did any agency of Federal Government subscribe to a portion of the capital stock of City National Bank in Wichita Falls?

85. To what portion of the capital stock of City National Bank in Wichita Falls did you subscribe and what did you pay therefor? Attach as a part of your answer hereto the canceled check or checks given in such payment and if such was not paid in cash, then detail in what manner you paid for such stock and when you discharged your stock subscription liability to the new bank.

86. Detail fully as to the subscription to the capital stock of City National Bank in Wichita Falls, detailing the amount of the capital stock authorized to be issued under its charter, those who subscribed thereto and in what amounts, how much was paid therefor by the several subscribers, how such payments were made and whether or not such subscription obligations have been fully discharged, and, if not to what extent is such subscription liability still due to said bank?

2351 87. At or about the time it was determined to place the old bank in liquidation and form a new bank, was there or not any agreement or understanding between officers, directors and stockholders of the old bank with respect thereto? Detail in full each and every such agreement or understanding and attach hereto as a part of your answer such memoranda thereof as may have been reduced to writing.

88. Was each and every stockholder of the City National Bank of Wichita Falls given an equal opportunity with all others to join in the organization of City National Bank in Wichita Falls?

89. Was each and every stockholder of City National Bank of Wichita Falls fully and completely advised of each and every thing that was contemplated to be done in the liquidation of the old and the organization of the new bank?

90. Attach as your answer hereto copies of each communication to stockholders of City National Bank of Wichita Falls evidencing the facts given in answer to the two immediately preceding questions.

The above and foregoing interrogatories will be answered by the impleaded defendant J. J. Perkins, whose residence is Wichita Falls, Texas, and one of whose solicitors of record is Leslie Humphrey, who likewise resides in Wichita Falls, Texas, a copy hereof being filed with the Clerk for use on demand.

Respectfully Submitted,
KILGORE & ROGERS,
By GUY ROGERS,
Attorneys for Wichita Royalty Company.

OBJECTIONS OF THE CITY NATIONAL BANK OF WICHITA FALLS TO SAID INTERROGATORIES.

Filed in U. S. Dist. Court Sept. 7, 1936.

2352 (Title Omitted.)

The impleaded defendants, J. T. Harrell, J. J. Perkins, and Leslie Humphrey, together with the other parties made defendants in the cross-action of the Wichita Royalty Company, come now, pursuant to Rule 58 for the practice of Courts in Equity in the United States, and object to the interrogatories propounded by the Wichita Royalty Company and E. E. Scannell to J. T. Harrell,

J. J. Perkins, and Leslie Humphrey, and to each and all of such interrogatories, for the following reasons:

(A) That it is apparent from said interrogatories that the same constitute a "fishing expedition" to discover from a mass of immaterial testimony evidence which might become material;

(B) That such interrogatories in effect require the submission of said defendants' evidence in advance of the trial;

(C) That it is an attempt to pry into the adversary's case;

(D) That it is an attempt to compel the production of memorandum from which the name or names of some witness or witnesses may be secured whose testimony might be material;

(E) That the evidence called for is not the disclosure of ultimate facts.

Wherefore, the defendants and the parties to whom said interrogatories are propounded object to each and all of said interrogatories, and pray that their objections to same be sustained.

These defendants, including J. J. Perkins, object to the interrogatories propounded to the said J. J. Perkins, as follows:

2353 They object to interrogatories Nos. 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 31, 32, 33, 43, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, and 90 for the reason that said interrogatories inquire into confidential matters which are

not material to the issues in this cause and is not an attempt to discover the ultimate facts, as contemplated by Rule 58, but is in the nature of a "fishing expedition" and to gather evidence which might or might not be material.

These defendants further object to said interrogatories wherein they ask for a production of the minutes of the discount committee, for the reason that such minutes are confidential in their nature and are not a material inquiry to this cause of action.

These defendants further object to the interrogatories wherein they call for reports of the National Bank Examiner, for the reason that said examinations are matters confidential in their nature; that the reports are made by the National Bank Examiner and not by an officer or agent of the bank, and can serve no useful purpose and are not material and are too remote.

These defendants further object to such interrogatories propounded to J. J. Perkins wherein they call for communications between the bank, said witness, and agents of the United States Government, for the reason that the same are confidential in their nature and are not material.

Said defendants, including the defendant Leslie Humphrey, further object to the following interrogatories propounded to the said party, Leslie Humphrey, to wit,
235 interrogatories Nos. 5, 6, 7, 8, 9, 10, 15, 16, 17, and 18, for the reasons heretofore stated and for the further reasons that said interrogatories call for conclusions and inquire into confidential matters, especially interrogatories Nos. 7 and 15, as to the compensation paid to Leslie Humphrey and Tarlton Morrow, and do not call for ultimate facts and are not material inquiries into the cause of action presented by the said Wichita Royalty Company, and is an attempt to

cause the defendants to produce their evidence in advance of the trial.

These defendants, including the defendant J. T. Harrell, object to the following specific interrogatories propounded to him, namely, interrogatory No. 8, because it does not appear that the inquiry is material or calls for any ultimate facts and requires these defendants to produce their testimony in advance of the trial, and that said information can more readily be obtained by the taking of testimony before the Special Examiner heretofore appointed by the Court. In this connection, these defendants say that J. T. Harrell is an executive officer of the bank and the information called for in said interrogatory No. 8 will necessarily have to be supplied by some bookkeeper or accountant in the bank, and that these defendants are willing to supply from such source such information before the Special Examiner.

The same objection is made to interrogatory No. 9. It is apparent that the book entries of the bank are inquired about in respect to said interrogatories Nos. 8 and 9, and that these defendants are willing to produce the books and records before the Special Examiner in respect to such inquiries as are material.

These defendants object to interrogatory No. 10 for the same reason.

2355 These defendants object to interrogatory No. 11, for the reason that it calls for the attaching of the original records of the bank and, in this connection, these defendants would respectfully show that the Wichita Royalty Company's attorney has been furnished with photostatic copies of such instruments as called for in interrogatory No. 11; that such information can be more readily ascertained from an inquiry into the records of the bank from one who has kept or is familiar with the records, and not from an executive officer.

These defendants object to interrogatory No. 13, for the reason that it calls for a mass of information, some of which might not be material, and it is apparent that the same is a "fishing expedition."

Likewise, these defendants object to interrogatory No. 14 propounded to J. T. Harrell, in that it calls for the exhibition of all deposit slips of G. W. Peckham and all accounts on which G W. Peckham had authority to draw checks; that the same necessarily calls for much immaterial matter.

These defendants object for the same reason to interrogatory No. 16 propounded to J. T. Harrell.

These defendants object to interrogatory No. 17 for the same reason.

These defendants object to interrogatories Nos. 18, 19, and 20 for the same reasons and, in this connection, these defendants, including the defendant J. T. Harrell, say that they are willing to produce and furnish to the examiner appointed, or to the Court, such instruments as are material to the inquiry into this cause and as to the cause of action presented by the plaintiff, Wichita Royalty Company.

2356 These defendants, including the defendant J. T. Harrell, object to interrogatory No. 21, which calls for the furnishing of all reports made by the National Bank Examiner of the examination of the City National Bank during 1923 and subsequent years, for the reason that said reports are confidential communications from the Department of Banking and said bank; that the National Bank Examiner is not an officer or agent of the bank and that such reports are too remote, and are not a material inquiry.

For the same reason, these defendants, including the defendant J. T. Harrell, object to interrogatories Nos. 22, 23, and 24.

These defendants object to interrogatory No. 25, for the reason that it does not call for a discovery, as contemplated by Rule 58 in Equity. In this connection, however, these defendants would respectfully show to the Court that they are willing to fully disclose to the Examiner the books and records of the City National Bank of Wichita Falls, Texas, in relation to the account of the Wichita Royalty Company, G. W. Peckham, and the Marlborough Addition, in so far as they are material to any inquiry in this case or to the specific items sued upon.

Wherefore, these defendants pray that these objections be set down for hearing and that upon a hearing the same be sustained.

T. R. BOONE,
Attorney for J. T. Harrell.
WEEKS & MORROW,
BULLINGTON, HUMPHREY & KING,
Attorneys for J. J. Perkins, Leslie Humphrey, et al.

ORDER OF THE COURT UPON THE HEARING OF SAID OBJECTIONS.

Filed and Entered Sept. 12, 1936.

2357 (Title Omitted.)

On this the 12th day of September A. D. 1936, came on to be considered the exceptions to certain interrogatories propounded by the Wichita Royalty Company and E. E. Scannell to J. T. Harrell, J. J. Perkins and Leslie

Humphrey, the parties being before the Court, and the Court, after hearing said exceptions, sustains the exceptions as to the following interrogatories propounded to the witness, J. T. Harrell:

Interrogatories Nos. 11, 13, 15, 16, 17, 21, 22 and 25, and the Court sustains the exceptions to the following interrogatories propounded to the witness Leslie Humphrey:

Interrogatories Nos. 5, 6, 16, 17, and 18, and the Court sustains the exceptions to the following interrogatories propounded to the witness J. J. Perkins:

Interrogatories Nos. 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 31, 32, 33, 43, 46, 47, 48, 49, 51, 52, 57, 60, 63, 64, 65, 66, 67, 68, 69, 72, 74, 75, 77, 79, 83, 86, and 87.

It Is Further Ordered that the time for the answering of said interrogatories by J. T. Harrell is extended until October 10, A. D. 1936.

This order is wtihout prejudice to the rights of the Wichita Royalty Company and E. E. Scannell to require the production and/or proof of such evidence inquired about by other methods than by discovery under Rule 58.

WM. H. ATWELL,
United States District Judge.

ANSWERS OF J. J. PERKINS TO SAID INTERROGATORIES.

Filed in U. S. Dist. Court Sept. 25, 1936.

2358 (Title Omitted.)

Answers of J. J. Perkins to the interrogatories propounded in Equity No. 358 by Wichita Royalty Company and E. E. Scannell.

J. J. Perkins, being duly sworn, makes the following answers to the interrogatories propounded to him by Wichita Royalty Company and E. E. Scannell:

Answer to Interrogatory No. 1:
I am.

Answer to Interrogatory No. 2:
For fifteen years or more.

Answer to Interrogatory No. 3:
Reasonably so.

Answer to Interrogatory No. 4:
Yes.

Answer to Interrogatory No. 5:
The Committee was composed of the Active Officers of the Bank and usually with the assistance of one or two Directors other than the Active Officers.

Answer to Interrogatory No. 6:
The personnel of the Committee remained the same except as to the outside Directors who changed from time to time without any definite period of service to suit the convenience of the outside Directors so serving.

Answer to Interrogatory No. 7:
My understanding is they held a meeting every morning except Saturday morning and Sunday morning and holidays.

2359 Answer to Interrogatory No. 8:
The Committee would meet to pass upon the renewal of such loans as were coming up for renewal, these usually being submitted ten days in advance of their due date. The Committee would also consider such applications as were submitted for new loans and would also consider any information which might be

submitted or was available affecting any loans of the bank or any other business pertaining to the bank.

Answer to Interrogatory No. 9:
No.

Answer to Interrogatory No. 10:
The Board of Directors left to J. T. Harrell, who was either President or Active Vice-President, such discretion as was usual and customary in an official in his position.

Answer to Interrogatory No. 11:
Nos. 11 to 29, Inclusive, not answered because exceptions were sustained to such interrogatories.

Answer to Interrogatory No. 30:
Yes. I knew that J. T. Harrell, J. A. Kemp and G. W. Peckham were all interested in the Marlborough Addition and this information was common knowledge in business circles generally in Wichita Falls.

Interrogatories Nos. 31, 32 & 33 Omitted.

Answers to Interrogatories Nos. 34 & 35:
I could not tell you what investigation was made with reference to the authority of G. W. Peckham to borrow money in the name of the Wichita Royalty Company. It was my understanding that he was sole trustee of the Wichita Royalty Company, and as such trustee, was supposed or reputed to have had the widest possible authority in connection with the affairs of the Wichita Royalty Company, and he was the only representative of said Wichita Royalty Company having such authority.

2360 Answers to Interrogatories Nos. 36 & 37:
I do not know whether the Committee has ever read the Declaration of Trust, but I know I have never read the Declaration of Trust of Wichita Royalty

Company; but it was common knowledge in business circles in Wichita Falls that Mr. Peckham was the Sole Trustee of Wichita Royalty Company. I have never at any time heard of his authority in connection with the Wichita Royalty Company being questioned until you questioned it and neither have I heard of the authority of any other sole trustee of any other royalty company operating in and around Wichita Falls as having been questioned. I supposed Mr. Peckham's authority was almost unlimited as to the Wichita Royalty Company. I do not have any knowledge of whether any legal advice was ever obtained with reference to Peckham's authority to act for Wichita Royalty Company.

Answers to Interrogatories Nos. 38 & 39:

Since the matter about which you inquire with reference to the Wichita Royalty Company and G. W. Peckham occurred several years ago, I have no recollection of any Committee meetings. I do recollect, however, at several of our Directors' meetings that these various loans, and particularly the Wichita Royalty Company, G. W. Peckham and Marlborough Addition, were discussed, and while I have no independent recollection at this time of the detailed information disclosed at that time, I do recall that it was our judgment that the loans were good loans.

Answer to Interrogatory No. 40:

I cannot recall what was said in respect to the Wichita Royalty Company note since the transactions inquired about were several years ago.

2361 Answer to Interrogatory No. 41:

I do not recall any specific conversations in respect to the G. W. Peckham loan. Peckham's loans were considered good.

Answer to Interrogatory No. 42:

I do not now remember the details of any discussions had with reference to these notes, but I do know in a

general way that these notes, about which you make inquiry, were discussed at various Directors' meetings.

Interrogatory No. 43 Omitted.

Answer to Interrogatory No. 44:

I knew in a general way about the indebtedness of the Wichita Royalty Company and G. W. Peckham to the City National Bank.

Answer to Interrogatory No. 45:

I cannot answer this because you are asking about something that occurred some 8 or 10 years ago and I do not remember any of the details of the discussion at this time.

Interrogatories Nos. 46, 47, 48 & 49 Omitted.

Answer to Interrogatory No. 50:

It is my understanding that the members of the Discount Committee, other than the Active Officers, were paid $5.00 per meeting at a portion of said period under inquiry.

Interrogatories Nos. 51 & 52 Omitted.

Answers to Interrogatories Nos. 53 & 54:

Mr. E. A. Deaton, who is Liquidating Agent for the Bank, has the records giving this information, and he will be willing to furnish the same to you.

I do not have a record of the deposits of City
2362 National Bank of Wichita Falls but it is my understanding that the deposits not only in the City National Bank but in nearly all the other banks over the country began to decrease during the early part of 1930 and continued to decrease until March 1933, when all the banks were closed by Federal Authority; the same would, of course, apply to the assets as well as to the deposits.

Answers to Interrogatories Nos. 55 & 56:

Mr. E. A. Deaton can furnish you this information and I am quite sure he will do so upon request. I do not have this information.

Interrogatory No. 57 Omitted.

Answers to Interrogatories Nos. 58 & 59:

During the summer of 1931 the deposits of the City National Bank were shrinking quite rapidly and by fall it was apparent that it would be necessary to obtain a large amount of funds, perhaps a million dollars, in order to safely meet the heavy withdrawals and keep the bank in liquid position.

An examination of the loans of the bank disclosed that nearly all of them had been made to local people and to force their collection would have meant bankruptcy to a large number of the makers of these obligations and would have greatly disturbed the feeling of unrest not only in Wichita Falls but in this entire section of the country.

The Board of Directors discussed this situation and decided to borrow the necessary funds by pledging the notes of the bank as collateral. In furtherance of this the Board of Directors signed a personal guarantee to the Federal Reserve Bank in Dallas for the sum of $750,000.00 to guarantee the repayment of any money loaned to the City National Bank of Wichita
2363 Falls by the Federal Reserve Bank. Immediately after the signing of this guarantee the City National Bank borrowed from the Federal Reserve Bank of Dallas $460,000.00 and gave as collateral some of the notes receivable of the City National Bank. The personal guarantee of the Directors also served as an additional security on this loan.

At about the same time the City National Bank borrowed from the First National Bank of Wichita Falls $150,000.00 and the City National Bank executed its note for that amount and which note was indorsed by

the Directors of the City National Bank, including myself.

We also borrowed from the First National Bank in Dallas $100,000.00 and this note was also indorsed by the City National Bank Directors.

At a later date there had been some payments made on this loan and perhaps one or two renewals and some additional funds were borrowed from the First National Bank of Wichita Falls which, as I recall, were handled in the same way.

I do not have the details of these loans, nor the time at which they were paid, but I do know they have all long since been paid and were paid by the City National Bank. None of the Indorsers upon said obligations either to the First National Bank of Wichita Falls, the First National Bank in Dallas or to the Federal Reserve Bank ever had to pay anything thereon but all of the obligations were satisfied and paid by the City National Bank.

Interrogatory No. 60 Omitted.

Answer to Interrogatory No. 61:

Yes.

2364 Answer to Interrogatory No. 62:

See Answers to Nos. 58 & 59.

I do not have the canceled note about which you make inquiry and have never had it.

Interrogatories Nos. 63, 64, 65, 66, 67, 68 & 69 Omitted.

Answers to Interrogatories Nos. 70 & 71:

The Answers to Interrogatories Nos. 70 & 71 are evidently intended to be predicated upon the answer to Interrogatory No. 69; however, I did not make any payment to the First National Bank, or to any other person, in payment of indebtedness of the City National Bank. I do not have any check, or checks, whereby I paid any part thereof, for the reason that I paid no part of such indebtedness. The loans which were obtained from the

First National Bank have been fully paid by or through the City National Bank of Wichita Falls, or from bills receivable assigned to the individuals who secured said loans, but I did not personally pay any part of same.

Interrogatory No. 72 Omitted.

Answer to Interrogatory No. 73:
No.

Interrogatories Nos. 74 & 75 Omitted.

Answer to Interrogatory No. 76:
The National Banks over the entire country were closed by Federal Authority about March 1, 1933. The City National Bank of Wichita Falls never asked for authority to re-open and it is my understanding that all the banks had to ask for this authority in order to re-open.

Interrogatory No. 77 Omitted.

2365 Answer to Interrogatory No. 78:
I know that the City National Bank of Wichita Falls did not again open its doors for business because the City National Bank in Wichita Falls had been organized before the end of the banking holiday and the new bank purchased certain of the assets of the old bank and assumed specific liabilities, as shown by the ledger of the old bank, all of which is fully set out in the contract as made between the old bank and the new bank.

Interrogatory No. 79 Omitted.

Answer to Interrogatory No. 80:
Yes.

Answer to Interrogatory No. 81:
The owners of the stock of City National Bank were widely scattered and after going over the list of the

stockholders there were many of the stockholders who could not pay an assessment on the stock of the old bank and some who probably would not without litigation, and after a full discussion, it was deemed best to organize a new bank to be known as the City National Bank in Wichita Falls. In using this name the bank could still have the advantage of the prestige of the old bank. The Reconstruction Finance Corporation purchased $400,000.00 preferred stock in the new institution and it was immediately given authority to begin business, and which it did at the end of the banking holiday.

Answer to Interrogatory No. 82:

Because there was no occasion to continue the old bank when the new one had been organized in the name of City National Bank in Wichita Falls.

2366 Interrogatory No. 83 Omitted.

Answer to Interrogatory No. 84:

The Reconstruction Finance Corporation purchased $400,000.00 Preferred Stock in City National Bank in Wichita Falls.

Answer to Interrogatory No. 85:

I subscribed for $35,000.00 of the Capital Stock of the City National Bank in Wichita Falls and I paid for it. I did not give any check for this money. My associate, Mr. L. H. Cullum, subscribed for $15,000.00 of the Capital Stock of the new Bank, which, together with my subscription of $35,000.00, amounted to $50,000.00 and we borrowed from the First National Bank in Dallas this $50,000.00 and gave them a Deed of Trust upon some of our oil properties. This money was turned over direct to the new bank by the First National Bank in Dallas, which sum of $50,000.00 was paid by us to the First National Bank in Dallas over a period of several months.

Interrogatories Nos. 86 & 87 Omitted.

Answer to Interrogatory No. 88:
Yes.

Answer to Interrogatory No. 89:
Yes. Each and every stockholder of the City National Bank of Wichita Falls were advised of the stockholders meeting of said bank at which time all the information affecting the bank was available, and if any of them were not fully advised, it was because they did not attend the meeting.

Answer to Interrogatory No. 90:
I do not have the copies of the communication sent to the stockholders generally of the City National Bank of Wichita Falls. I am sure if you do not already have this information, you can obtain copies of the various communications from the Liquidating Agent of the City National Bank of Wichita Falls.

2367

J. J. PERKINS.

The State of Texas,
County of Wichita.

I, Ruby Kessler, a Notary Public in and for Wichita County, Texas, do hereby certify that the answers to the questions were made before me by J. J. Perkins, after being duly sworn, and were by me reduced to writing, and in the presence of the deponent read over to him and by him subscribed in my presence after being reduced to writing.

Given Under My Hand and Seal of Office this 25 day of September A. D. 1936.

RUBY KESSLER,
(Seal) Notary Public, Wichita County, Texas.

ANSWER OF THE CITY NATIONAL BANK OF WICHITA FALLS, ET AL, TO THE MOTION TO DISMISS.

Filed in U. S. Dist. Court, December 3, 1936.

2368 (Title Omitted.)

The City National Bank of Wichita Falls, Texas, a corporation; the City National Bank in Wichita Falls, Texas, a corporation; J. T. Harrell, individually and as trustee of the City National Bank of Wichita Falls, Texas; the Texas Investment Company, a corporation; E. A. Deaton, Liquidating Agent of the City National Bank of Wichita Falls, Texas; L. H. Cullum, Leslie Humphrey, Tarlton Morrow, Jack Jeffus, Oral Jones, Frank Kell, Joe Kell, J. J. Perkins, C. W. Snider and F. P. Timberlake, interpleaded defendants in the cross-action of the Wichita Royalty Company, in reply and answer to the motion to amend filed by the Wichita Royalty Company and E. E. Scannell, plead as follows:

1. In answer to paragraph number 1 of said motion, and the various subdivisions thereof, these interpleaded defendants respectfully say:

That the cross action and interpleader of the Wichita Royalty Company filed herein was a suit filed on the 18th of June, 1936, which suit for the first time sought a recovery upon the cause of action therein presented against these interpleaded defendants; that said suit was returnable on July 13, 1936, and that said interpleaded defendants were required to plead and answer on the 14th of July, 1936, said suit being filed in the 30th District Court of Wichita County, Texas, and that these interpleaded defendants, together with all other necessary defendants in said cross action and interpleader, prior to the date that they were re-

2369 quired to answer and prior to July 14, A. D. 1936, timely filed their petition and bond for

removal to this Honorable Court, which petition and bond was in proper form, and the bond was duly approved and said cause was duly removed from said State Court to this Honorable Court, all of which is apparent from the record herein; that said cross action and interpleader is a suit brought to declare void a transfer of the assets of the City National Bank of Wichita Falls to the City National Bank in Wichita Falls under Title 12, Section 91, United States Code Annotated, and is a suit to wind up the affairs of a national bank in liquidation and to fix a liability against the directors of said respective banks by virtue of a transfer of the assets of a national bank while allegedly insolvent, and is therefore a suit arising under the Constitution and laws of the United States and is a suit in equity, and that this Honorable Court therefore has jurisdiction to hear and determine said cause and to grant all ultimate and incidental relief prayed for by the respective parties.

That the separate and incidental issues presented is no bar to the jurisdiction of this Honorable Court, as it has complete power to fully adjudicate and determine all such issues.

2. In answer to paragraph number 2 of said motion to remand, these interpleaded defendants say that said cause of action presented by the Wichita Royalty Company in its cross action and interpleader is a suit in equity, seeking equitable relief as against the interpleaded defendants, predicated and bottomed upon a right allegedly given said Wichita Royalty Company under the laws of the United States, and for the winding up of a national bank, and therefore this Honorable Court has actual and potention jurisdiction to
2370 hear and determine all of the issues and controversies.

3. Replying to paragraph number 3 in said motion, these interpleaded defendants say that none of them,

save and except the City National Bank of Wichita Falls and J. T. Harrell, were defendants in the original cross action filed by the Wichita Royalty Company; and these interpleaded defendants (except Harrell and the City National Bank of Wichita Falls) were first made parties to the cross action and interpleader of the Wichita Royalty Company on June 18, 1936; that the original suit filed by the Wichita Royalty Company against the City National Bank of Wichita Falls and J. T. Harrell was a simple action for debt and presented no Federal question, and no relief was prayed for under the Constitution and laws of the United States, but this suit is a suit squarely predicated upon and arising under the Constitution and laws of the United States, all of which is apparent from said cross action and interpleader, and that these interpleaded defendants all timely filed in the manner required by law their petition and bond for removal and said cause was duly removed under the statutes of the United States to this Honorable Court, and at no time did any of these interpleaded defendants invoke the jurisdiction of the State Court to hear and determine the matters raised in this cross action and interpleader, and respectfully allege that they are not estopped to remove this cause to this Honorable Court.

4. In reply to paragraph number 4 in said motion to remand, these interpleaded defendants respectfully allege that the cause of action asserted by the cross complainants, as shown by their third amended original answer, cross action, and interpleader filed herein on July 13, 1936, is a suit arising under the Constitution
2371 and laws of the United States and to wind up the affairs of a national bank, and involves a controversy and dispute properly within the jurisdiction of this Honorable Court.

5. In reply to paragraph number 5 in the motion to remand, these interpleaded defendants say that the cause of action as pleaded is governed by the statutes

of the United States and the laws governing the winding up of national banks; that it is a case growing out of the legislation of Congress predicated, and bottomed upon a right given the cross-complainant Wichita Royalty Company under the laws of the United States; that the laws of the United States form an ingredient of the original cause of action and it involves the construction of the laws relating to the winding up of national banks and of Section 91, Title 12, of the United States Code Annotated, and is therefore a suit of which this Court has jurisdiction on removal, as well as original jurisdiction.

6. In reply to paragraph number 6 in the motion to remand, these interpleaded defendants say that the suit is predicated upon Section 91, Title 12, of the United States Code Annotated, declaring preferential transfers of national banking associations, while insolvent, invalid and also to wind up the affairs of a national banking association now in liquidation; that the City National Bank of Wichita Falls is a national banking association in liquidation pursuant to the laws and statutes of the United States of America relating to the winding up of affairs of national banking associations; that E. A. Deaton is the Liquidating Agent duly appointed as such under the laws of the United States; and acting as such pursuant to the laws of the United States and under
2372 the direction of the Comptroller of the Currency, and is a party to this suit, and that said cause, involving as it does the application and construction of the laws of the United States, is removable to this Honorable Court.

7. In reply to paragraph number 7 of the motion to remand, these interpleaded defendants say that they (except Harrell and the City National Bank of Wichita Falls) were first made parties defendant to the cross-complainants' suit on June 18, 1936, and the cause became removable only after the filing of said third

amended original answer, cross action, and interpleader, and that this cause was timely removed by the interpleaded defendants and that the original action in which the City National Bank of Wichita Falls and J. T. Harrell were made interpleaded defendants presented no Federal question, but was a simple action for debt.

8. In answer to paragraph number 8 of the motion to remand, these interpleaded defendants say that the petition and bond prayed for a removal of the entire cause and suit to this Honorable Court, all of which is apparent from the petitions and bonds filed herein, and that, upon the filing of said respective petitions and bonds for removal and approval of said bonds, the entire cause was removed to this Court.

9. Answering paragraph number 10 of the motion to remand, these interpleaded defendants say that this cause of action is one not only to wind up the affairs of a national bank but also a suit arising under the laws and Constitution of the United States, in that it requires the construction and application:

2373 (a) Of the Laws of the United States relative to the winding up of a national banking association in liquidation;

(b) A statute of the United States determining whether or not liability against the new bank (the City National Bank of Wichita Falls) and its directors is created by virtue of a transfer of the assets of the City National Bank of Wichita Falls while it is or was allegedly insolvent.

both of which grounds give this Court jurisdiction.

10. That neither The Texas Company, the Continental Oil Company, nor the Humble Oil & Refining Company were necessary parties to this cause; that they occupy the position of nominal parties, being stakeholders only.

not interested in the final outcome of said suit and were not necessary parties to the removal, and the guardian of William and George Peckham, minors, had inherent authority under the order of appointment to petition for a removal; that this is also true with reference to the administrator of the estate of G. W. Peckham, deceased; that neither Charles L. Black, Guy Rogers, individually and as trustee, E. E. Scannell, individually and as trustee, nor the Wichita Royalty Company were defendants in the cross action and interpleader of the Wichita Royalty Company and therefore were not required to join in the petition for removal.

11. Answering paragraph number 12, these interpleaded defendants say that the suit is one arising under the Constitution and laws of the United States and is removable regardless of the citizenship of the parties, and that the guardian of the minors had authority as such to petition for removal; that a preliminary order of the Probate Court, granting the guardian or administrator the right or power to petition for removal, is not required.

12. Answering paragraph number 14 of the motion to remand, these interpleaded defendants deny that the Texas Investment Company is a dissolved cor-
2374 poration and say that it is a corporation duly created by the laws of Texas, in good standing, and its action in petitioning for removal was made pursuant to the authority of the officers and directors of said corporation.

13. These interpleaded defendants, in answer to paragraph number 15 of the motion to remand, deny that the cause of action asserted by the City National Bank of Wichita Falls is wanting in equity.

14. These interpleaded defendants further respectfully say that the cross-complainants, Wichita Royalty Com-

pany and E. E. Scannell, have waived any right to move for a remand of this cause and are estopped to do so, for the reason that they have appeared in this cause after it was removed, prior to making any motion to remand, petitioned this Honorable Court for relief, filed interrogatories praying for a discovery under Equity Rule 58, and, pursuant to the orders of this Court, required several of the interpleaded defendants, namely, J. J. Perkins, J. T. Harrell, and Leslie Humphrey, to appear and make answer to interrogatories propounded under Equity Rule 58, and, having invoked the jurisdiction and aid of this Court to obtain a discovery and having obtained evidence pursuant thereto, said cross-complainants are estopped to deny the jurisdiction of this Court.

Wherefore, these interpleaded defendants respectfully pray that the motion to remand be denied.

T. R. BOONE,
Attorney for the Interpleaded Defendant J. T. Harrell.
WEEKS & MORROW
BULLINGTON, HUMPHREY & KING,
Attorneys for the Interpleaded Defendants, except J. T. Harrell.

2375 The State of Texas,
County of Wichita.

J. T. Harrell, one of the interpleaded defendants, being duly sworn on oath, says that he has read the above and foregoing answer to the motion to remand and that the facts therein stated are true.

J. T. HARRELL.

Sworn to and Subscribed Before Me, this 1st day of December A. D. 1936.

MRS. GERTRUDE TURNER.
(Seal) Notary Public, Wichita County, Texas.

The State of Texas,
County of Wichita.

Leslie Humphrey, for himself and as attorney for the other interpleaded defendants (except J. T. Harrell), being duly sworn on oath, says that he has read the above and foregoing answer to the motion to remand of the Wichita Royalty Company and E. E. Scannell and that the facts therein stated are true.

LESLIE HUMPHREY.

Sworn to and Subscribed Before Me, this 1st day of December A. D. 1936.

MRS. GERTRUDE TURNER,
(Seal) Notary Public, Wichita County, Texas.

PETITION FOR CROSS APPEAL ON BEHALF OF THE CITY NATIONAL BANK OF WICHITA FALLS, TEXAS, A NATIONAL BANKING ASSOCIATION, AND E. A. DEATON, ITS LIQUIDATING AGENT COMPLAINANTS, AND THE CITY NATIONAL BANK IN WICHITA FALLS, A NATIONAL BANKING ASSOCIATION, INTERPLEADED DEFENDANT.

Filed in U. S. Dist. Court July 3, 1937.

2376 (Title Omitted.)

To the Honorable Wm. H. Atwell, Judge of the United States District Court for the Northern District of Texas.

Your petitioners, the City National Bank of Wichita Falls, Texas, a national banking association, now in liquidation, and E. A. Deaton, its Liquidating Agent, complainants in the above cause, together with the City National Bank in Wichita Falls, a national banking as-

sociation, interpleaded defendant in said cause, respectfully show that the Wichita Royalty Company and E. E. Scannell, defendants in the above cause, have been allowed by this Honorable Court an appeal from the judgment and decree made herein on the 9th of April A. D. 1937, and your petitioners also consider themselves aggrieved by said judgment and decree in so far as it denies a recovery on behalf of the complainants against the Wichita Royalty Company and its Trustee, E. E. Scannell, defendants, as prayed for in its repleaded bill of complaint, and in the cross-complaint of the interpleaded defendant, City National Bank in Wichita Falls.

Therefore, your petitioners pray for the allowance of a cross-appeal from said judgment and decree, so denying such recovery, to the Circuit Court of Appeals of the United States for the Fifth Circuit, for the reasons stated in the assignments of error filed herewith.

Dated this the 29th day of June A. D. 1937.

TARLTON MORROW,
LESLIE HUMPHREY,
Attorneys for the City National Bank of Wichita Falls and E. A. Deaton, Liquidating Agent, Complainants, together with City National Bank in Wichita Falls, Interpleaded Defendant.

ORDER OF THE COURT ALLOWING THE CROSS-APPEAL.

Filed and Entered July 3, 1937.

2377 (Title Omitted.)

The cross-appeal of the City National Bank of Wichita Falls, Texas, and E. A. Deaton, Liquidating Agent, com-

plainants, and City National Bank in Wichita Falls, a national banking association, interpleaded defendant, is hereby allowed, this 3 day of July A. D. 1937.

It Is Further Ordered that said cross-appeal may be considered upon the record filed by the defendant Wichita Royalty Company, included in which shall be the petition for cross-appeal, its allowance, and the assignments of error accompanying same.

WM. H. ATWELL,
United States District Judge.

ASSIGNMENTS OF ERROR FILED BY THE CITY NATIONAL BANK OF WICHITA FALLS AND E. A. DEATON, ITS LIQUIDATING AGENT, COMPLAINANTS, TOGETHER WITH THE CITY NATIONAL BANK IN WICHITA FALLS, INTERPLEADED DEFENDANT.

Filed in U. S. Dist. Court July 3, 1937.

2378 (Title Omitted.)

First Assignment of Error.

The Court erred in failing to render judgment in favor of the complainant, City National Bank of Wichita Falls, and against the Wichita Royalty Company and E. E. Scannell, defendants, upon the note of $22,000.00 signed by the Wichita Royalty Company, as prayed for by the complainant in its repleaded bill of complaint, and for a foreclosure of an equitable lien on the assets of the Wichita Royalty Company, as said note of $22,000.00 was an undisputed unpaid balance due the complainant bank for money borrowed by the Wichita Royalty Company, a trust, secured by an equitable lien on all of the assets

of said trust, and the undisputed evidence, as well as the facts found by the Trial Court, clearly establish the complainant bank's right to recover thereon in accordance with the prayer in the complainant's repleaded bill of complaint.

Second Assignment of Error.

The Court having found that only the sum of $4,357.11 paid to the complainant bank by the Trustee
2379 Peckham, on his personal debts, was traceable to funds of the Wichita Royalty Company which had been deposited by the Trustee, Peckham, to his personal account, therefore the Court erred in failing to render judgment in favor of the complainant bank and against the Wichita Royalty Company and its Trustee for the amount of $22,000.00, interest and attorney's fees, less such credit of $4,357.11, and for the establishment and foreclosure of an equitable lien for such sum as was due on the assets of the Wichita Royalty Company, a trust estate, the trust agreement, as well as the conduct of the successor trustee, having created an equitable lien on the assets of the Wichita Royalty Company for the payment of its valid debts.

Third Assignment of Error.

The Court erred in failing to render judgment in favor of the complainant upon the note of the Texas Investment Company, by virtue of the liability of the Wichita Royalty Company as indorser thereof, as prayed for in complainant's repleaded bill of complaint.

Wherefore, complainants, City National Bank of Wichita Falls and E. A. Deaton, its Liquidating Agent, together with the City National Bank in Wichita Falls, interpleaded defendants, respectfully pray that these assignments be sustained and that part of the decree deny-

ing the complainant a recovery be reversed and that the remainder of the decree in all things be affirmed.

TARLTON MORROW,
LESLIE HUMPHREY,
Attorneys for City National Bank of Wichita Falls and E. A. Deaton, Liquidating Agent, Complainants, and City National Bank in Wichita Falls, Interpleaded Defendant.

2382 PRAECIPE.

Filed in U. S. Dist. Court July 14, 1937.

(Title Omitted.)

To the Clerk of the United States District Court, for the Northern District of Texas:

Now Comes the City National Bank of Wichita Falls and E. A. Deaton, its Liquidating Agent, together with the City National Bank in Wichita Falls, Appellees and Cross-appellants herein, and, having been furnished with a copy of the Praecipe of the Appellant, Wichita Royalty Company, request the following additional portions of the record to be incorporated in the transcript on appeal:

1. Agreement to shorten the record.

2. Second Amended Original Answer, Cross-action, and Interpleader of the Wichita Royalty Company, filed April 27, 1931. (Pages 59 to 104, Transcript from the State Court)

3. Judgment of the District Court of Wichita County, Texas.

4. Citation and Summons issued upon the Third Amended Original Answer, Cross-action, and Interpleader of the Wichita Royalty Company, together with the sheriff's return thereon, omitting copy of the cross-action and interpleader. (Page 331, Transcript from the District Court)

5. Notice to serve non-resident defendants Hazel D. Peckham et al and return thereon. (Pages 392 et seq. Transcript from the State Court)

6. Interrogatories propounded to J. J. Perkins by the Wichita Royalty Company after removal Under Rule 58 In Equity.

7. Objections of the City National Bank of Wichita Falls to said interrogatories.

8. Order of the Court upon the hearing on said objections.

9. Answers of J. J. Perkins to said Interrogatories.

2383 10. Answer of the City National Bank of Wichita Falls et al to the motion to dismiss and remand.

11. Petition for cross-appeal on behalf of the City National Bank of Wichita Falls, E. A. Deaton, its Liquidating Agent, and the City National Bank in Wichita Falls.

12. Order of the Court allowing the cross-appeal.

13. Assignments of Error on behalf of the cross-appeal.

14. Citation and waiver on cross-appeal.

15. This praecipe.

TARLTON, MORROW,
BULLINGTON, HUMPHREY &
KING,
By LESLIE HUMPHREY,
Solicitors for Appellees-Cross-appellants.

Service of the above praecipe is hereby acknowledged, this 13 day of July A. D. 1937.

KILGORE & ROGERS,
By GUY ROGERS,
Solicitors for Appellant, Wichita Royalty Company.
BOONE & DUFF,
By T. R. BOONE,
Solicitors for J. T. Harrell.
ARCH DAWSON,
Solicitor for the Estate and Heirs of G. W. Peckham, deceased and W. H. Peckham.

2384 CLERK'S CERTIFICATE.

United States of America,
Northern District of Texas.

I, GEORGE W. PARKER, Clerk of the United States District Court for the Northern District of Texas, do hereby certify that the foregoing is a true and correct transcript of record, assignments of error and all proceedings in Cause No. 358 In Equity, wherein City National Bank of Wichita Falls, Texas, is plaintiff, and Wichita Royalty Company and E. E. Scannell, Trustee, are defendants, as fully as the same now remain on file and of record in my office at Wichita Falls, Texas, save and except such pleadings and matters as are omitted upon agreement between counsel, with the Original Citation and Acknowledgment of Service, and the Citation on Cross Appeal included herein, in place of copies of same.

Witness my hand officially, and the seal of said Court at Wichita Falls, Texas, this 20th day of July A. D. 1937.

GEO. W. PARKER,
Clerk, United States District Court.

(Seal) By ELIZABETH HALL,
Deputy Clerk U. S. Dist. Court.

Citations omitted from the printed record, the originals thereof being on file in the office of the Clerk of the U. S. Circuit Court of Appeals.

* * * * * * * * *

[fol. 2069] That thereafter the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Fifth Circuit, viz:

ARGUMENT AND SUBMISSION

Extract from the Minutes of February 22, 1938

No. 8541

WICHITA ROYALTY COMPANY et al.

versus

CITY NATIONAL BANK OF WICHITA FALLS et al.

(And Reverse Title)

On this day this cause was called, and, after argument by Leslie Humphrey, Esq., and Tarlton Morrow, Esq., for appellees and cross-appellants, and Guy Rogers, Esq., and Ray Bland, Esq., for appellants and cross-appellees, was submitted to the Court.

[fol. 2070] OPINION OF THE COURT—Filed March 23, 1938

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 8541

WICHITA ROYALTY COMPANY et al., Appellants and Cross-Appellees,

versus

CITY NATIONAL BANK OF WICHITA FALLS et al., Appellees and Cross-Appellants

(And Reverse Title)

Appeal and Cross-Appeal from the District Court of the United States for the Northern District of Texas

(March 23, 1938)

Before Sibley and Holmes, Circuit Judges, and Mize, District Judge

SIBLEY, Circuit Judge:

On October 11, 1930, in a State Court, City National Bank of Wichita Falls (herein called the old bank) sued Wichita

Royalty Company and E. E. Scannell, its trustee, to recover on a note and on an indorsement made by them of another note, joining others from whom collateral equitable relief was sought. The above named defendants filed a cross-bill [fol. 2071] asserting a large liability against the Bank for a balance of a deposit account misappropriated by or with the assistance of the Bank. The Bank on a trial prevailed, but on appeal the Supreme Court of Texas sweepingly sustained the contentions of Wichita Royalty Company and Scannell, Trustee, and remanded the case for a new trial, expressly leaving questions of fact open. Wichita Royalty Co. vs. City National Bank, 89 S. W. (2d) 394, 93 S. W. (2d) 143. Meanwhile the Bank, closed by the bank holiday of March, 1933, did not reopen, but a new corporation called City National Bank in Wichita Falls (herein called the new bank) was created which purchased from the old bank its best assets, assuming stated liabilities not including the claim of Wichita Royalty Company. The remaining affairs of the old bank went into the hands of a liquidating agent pursuant to 12 U. S. C. A. §181. No receiver was appointed. Thereafter in May, 1936, the old bank filed an amended petition in the State court, and the Wichita Royalty Company and its trustee Scannell on June 18, 1936, filed what they termed a "third amended original answer, cross-action and intervention in lieu and in amendment of" their former pleadings. This pleading answered the amended petition, restated the cross-demand previously asserted, carrying it back several more years, and then set up the failure and insolvency of the old bank and the establishment of the new bank with practically the same officers, attacked the sale of assets from the old to the new bank and charged that it was designed to defeat the claims of Wichita Royalty Company and to prefer others contrary to the National Banking Act as found in 12 U. S. C. A. §91, and was void. It asserted that these and all other assets of the old bank constituted a trust fund for the ratable payment of all creditors. Malfeasance of the directors was charged. Several additional parties were made including the new bank, the liquidating agent of the old bank and its directors, and the [fol. 2072] administrator of G. W. Peckham, the former trustee of the Wichita Royalty Company. Besides judgment for its demand in a sum of $200,000 and a general accounting between all parties, and general legal and equitable relief, Wichita Royalty Company prayed "that the

old bank be declared to have been insolvent * * * and that its assets be decreed to be a trust fund for the benefit of all creditors * * * that all creditors of the old bank be given notice of the pendency of this suit and permitted to intervene herein * * * and that such fund be ratably distributed between the creditors of the old bank existing at its insolvency." Petitions were at once filed to remove the cause to the federal court on the grounds that the cross-petition was a case for winding up the affairs of a National Bank, and a suit arising under the laws of the United States and involving more than $3,000. Removal being allowed, motions to remand were made asking the remand of the whole cause, and of each separate cause of action involved. These were denied. Repleading was ordered, however. The case was tried and a decree rendered which denied the old bank recovery against Wichita Royalty Company and denied the latter recovery against the old bank; and ordered sale of the remaining assets of the old bank, and retained jurisdiction to wind up its affairs. Appeals taken by each side are before us contesting these judgments.

The case was discussed interestingly in an opinion by the District Judge, but there was no finding of the facts specially, nor a separate statement of conclusions of law as required by Equity Rule 70½. The evidence is long and complicated. A score or more of transactions are contested in the pleadings and evidence. Clear cut findings as to what was done in each and of the knowledge and participation of the bank and its officer Harrell in each are necessary. The opinion goes into no detail but expresses general conclusions [fol. 2073] such as that the court found no dishonest transaction on the part of Peckham, the former trustee, and that the Bank had not sustained its burden as to some matters and the Wichita Royalty Company had similarly failed as to others. We held this an insufficient compliance with the rule in Southwestern Bell Telephone Co. vs. City of San Antonio, 75 Fed. (2d) 880, saying "The contested facts should be put in such detail as will decide each contest concerning them, the purpose of the rule being to aid review by enabling it to be restricted to the exact points on which error is claimed." Complaint is made by the main appellants on this ground; and we find that we should be obliged to study out the whole of this complicated record without the assistance of special fact-findings specifically challenged. We shall remand the cause without allowing costs to either

side that Rule 70½ may be complied with and a new decree entered. But as was done in the case just cited, we shall pass upon some of the major questions of law, as an aid in the further proceedings; and necessarily upon the question of jurisdiction.

There is federal jurisdiction, and remand was rightly refused. The new cross-bill filed by Wichita Royalty Company and Scannell, as trustee and as stockholder, prayed for a collection and restoration of all the assets of the old bank, which was alleged to be insolvent, and for a distribution of them to all creditors. That plainly would be a winding up of the affairs of the old bank. The district court has a special jurisdiction of such a case. 28 U. S. C. A. §41 (16). International Trust Co. vs. Weeks, 203 U. S. 364. It has been held indeed that where no other relief is prayed a state court should not exercise jurisdiction. Birdsey vs. Commercial National Bank, 143 Ga. 627. Removal of such a suit is authorized. 28 U. S. C. A. §71. Lawrence Natl. Bank vs. Rice, 83 Fed. (2d) 642; Bailen vs. Deitrick, 84 Fed. (2d) 375; Studebaker Corporation vs. First National [fol. 2074] Bank, 10 Fed. (2d) 590. It is "a suit of a civil nature arising under the laws of the United States • • • of which the district courts of the United States are given original jurisdiction," within the very words of the removal statute, for a national bank is necessarily wound up under the provisions of the National Bank Act. Davis vs. Elmira Bank, 161 U. S. 275. Moreover the effort to set aside the transfer of the assets to the new bank as violative of 12 U. S. C. A. §91 made it a case arising under the laws of the United States and involving more than $3,000, and hence removable. The laws of the United States are to be directly applied both in testing the validity of the transfer and in ratably distributing all the assets to creditors. Gully vs. First National Bank, — U. S. —, is not to the contrary.

But it is urged that one cause of action, that of the Wichita Royalty Company against the old bank, had been before the state courts for several years and it was too late to remove it, and that the same was true of the suit by the old bank on its notes; and additionally that the old bank could not remove its own suit. It is of course true that neither of these controversies could have been independently removed and neither was sought to be. They come to the federal court as a part of the case asserted by the Wichita Royalty Company in its new cross-bill. That plead-

ing presented for the first time the elements of federal jurisdiction, and there was no delay in removing thereafter. The matters of the insolvency of the old bank and the illegal transfer of its assets and their final disposition might have been made the subject of an independent bill, but Wichita Royalty Company elected to attach them to the pending litigation. It cannot complain that the whole case is thereby rendered removable. It is true that this results in the trial in the federal court of controversies of which there would not otherwise have been federal jurisdiction. The juris- [fol. 2075] diction over them is dependent and ancillary. Hoffman vs. Lynch, 23 Fed. (2d) 518. The situation is like that where in an original suit in a federal court jurisdiction is based on a federal question; but all other matters are to be decided also, even though it turns out that the federal question is not necessary to be decided at all. Green vs. Louisville R. Co., 244 U. S. 499; Siler vs. Louisville R. Co., 213 U. S. 175. Where removal of the whole case is for local prejudice and influence the removal statute, 28 U. S. C. A. §71, expressly provides for a partial remand and it is suggested in Hoffman vs. Lynch, supra, that there may be a discretionary power to make such in other removals. See discussion in Tillman vs. Russo-Asiatic Bank, 51 Fed. (2d) 1023. There was no abuse of discretion here in retaining the whole controversy, because each of the elements bore on the others. In order to collect and distribute the assets of the old bank it would be necessary to try the question whether the note and indorsement sued upon by the bank were valid, as well as whether the bank owed the cross-demands asserted against it. Indeed the insolvency of the bank hangs on the decision, and consequently the validity of the transfer to the new bank. In a practical view, deciding the causes of action involving the federal questions required decision of the others.

After removal, proceedings had in the state court in general stand good until dissolved or modified in the federal court. 28 U. S. C. A. §79, 81. "The Circuit (now District) Court when a transfer is effected takes the case in the condition it was when the State court was deprived of its jurisdiction. The Circuit Court has no more power over what was done before the removal than the State court would have had if the suit had remained there. It takes the case up where the State court left it off." Duncan vs. Gegan, 101 U. S. 810. It is therefore asserted, citing as in point

Williams vs. Conger, 125 U. S. 397, that the opinion of the [fol. 2076] Supreme Court of Texas, which was not followed by the District Judge, is res judicata or at least the law of the case, as it would have been in the State courts. That decision is not res judicata because it was not a final judgment. It affirmed no judgment, but reversed it and directed a new trial. It could not bind the parties (except the liquidating agent) introduced into the case since it was rendered. No doubt it would have been accepted as the law of the case on the same facts upon a retrial in the State court, and ought to have been so regarded in the District Court. But we think that it is not absolutely binding on this court,* though entitled to the great consideration always due the decision of the highest court of the State where the litigation arose, and always accorded to the decisions of that eminent court. This is so because on a second appeal the Supreme Court of Texas could modify or recede from its former opinion if satisfied of its incorrectness;** Messinger vs. Anderson, 225 U. S. 436; Seagraves vs. Wallace, 69 Fed. (2d) 163; and this court is its successor as the appellate tribunal for this case. It has the same power to correct what may be clearly wrong. In searching for the correct rule we should at last be governed as to a question of federal law by the decisions of the Supreme Court of the United States. On a question of general commercial law we should also look to that court since we are answerable to it, remembering that where the true rule is in doubt there may be a leaning to that established by the local decisions. Mutual Life Ins. Co. vs. Johnson, 293 U. S. 335. On a question of purely local law the decisions of the Supreme Court of Texas should govern, whether rendered in this or another case. The main questions here [fol. 2077] relate to the powers of a trustee in respect of

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* Compare Lovell vs. Southern Ry. Co., 93 Fed. (2d) 377, where this court held itself not bound by a decision on demurrer in the State Court as being the law of the case.

** The readiness of that court to recede from error appears in its complete retraction of its first decision in a case argued and decided with this case. Quanah, A. & P. Ry. Co. vs. Wichita State Bank, 93 S. W. (2d) 701, superseding 89 S. W. (2d) 385.

his trust, and to the liability of a bank for a general deposit of trust funds; and for money misapplied by a depositor by paying it out to the bank itself or on checks to others. No Texas statute applies. The general principles of equity and of commercial and banking law govern. We shall take the middle ground above pointed out. As to Williams vs. Conger, supra, that was a land case in which the State decisions have peculiar weight, and the State decision was used to support rather than control the decision of the federal court. We proceed to set forth our views especially on points not in harmony with those expressed by the Supreme Court of Texas.

In bare outline, what happened was this: In June, 1920, one Robertson executed and recorded a declaration of a trust, naming it Wichita Royalty Company, for the benefit of holders of certificates of ownership, the capital being fixed at $1,000,000 to be raised by selling the certificates. The declaration provides: "The general purposes of this Company are to buy and sell oil and gas royalties and other oil and gas properties." "The entire affairs of this trust shall be managed by one trustee * * * and he may appoint, remove or reappoint such officers, agents and other assistants as he may think best, define their duties and fix their compensation." "The title to all property shall be made and held in the name of the trustee as such trustee." "The trustee shall have full and exclusive power and authority to conduct the business and affairs of this trust, to purchase, etc., any property necessary or proper for the purpose of the trust; to sell and convey all property, etc., to borrow money on the credit of the trust * * * to execute notes therefor * * * and generally to do things which in his judgment are necessary and prudent in the management and conduct of the business of the Company." In the event of vacancy a new trustee is to be appointed [fol. 2078] by the Judge of a named court. "The trustee shall be responsible only for his own wilful and corrupt breach of trust and not for any honest error of judgment." Provision is made for the compensation of the trustee, and for ending the trust and distributing its funds. Robertson, the first trustee, employed Scannell, the present trustee, as his bookkeeper. In 1923 G. W. Peckham was appointed trustee and so continued till his sudden death Nov. 7, 1929. He continued Scannell in charge of his books and records with the title Secretary and Treasurer, though Scannell

owned no certificate. Peckham kept the funds of the trust in the old bank in an account in the name of Wichita Royalty Company. He had also an individual account. He bought and sold oil properties for himself as well as for the trust. His sales to himself as trustee and the transfer of the trust's funds to his own account from time to time make the trouble here complained of. Scannell became trustee Jany. 2, 1930. He had quite full knowledge of Peckham's operations and had signed most of the checks for the trust, detaching and filing vouchers which showed fully what each was for. He had all the deeds and other papers as a Secretary should. After his appointment as trustee he audited the trust, repudiated a few transactions, but undertook expressly to ratify one touching the "Marlborough Addition", (a town lot enterprise), assisted in incorporating it as Texas Investment Company, accepting for the trust its half of the capital stock and becoming himself its president. The notes originally sued on relate to the Marlborough Addition enterprise. It failed a year and a half later, and when the bank sued on the notes Scannell, taking legal advice, repudiated it both as in origin a transaction between Peckham and Peckham as trustee, and as not being within the scope of the trust because not an oil or gas property but city building lots. Various other of Peckham's transactions were also attacked as involving the bank and its [fol. 2079] officer Harrell in liability. Peckham's estate was not sued by Wichita Royalty Company until the last cross-bill was filed June 18, 1936.

We pretermit discussion of Peckham's liability to his trust. A money recovery was held barred in the District Court, and his estate is said to be insolvent.

The liability of the old bank may be considered in three aspects: First, for trust funds received by it on individual debts due by Peckham. Second, for improperly paying out checks drawn on the account of Wichita Royalty Company. Third, for improperly paying checks drawn on Peckham's individual account from trust funds commingled with it. As to the first, the bank is liable to restore to the trust anything paid it directly from the Wichita Royalty Company account for personal debts of Peckham, for it is bound to regard such payments as a direct misapplication of which it is the beneficiary, unless it can show that Peckham because of the then state of his accounts with the trust was

entitled to be paid the money from it and duly charged himself with it. If the bank received payment from his individual account when it contained only trust funds and knew or should have known that it was taking such funds, it must repay them. Atlanta & St. Andrews Bay R. Co. vs. Barnes, — Fed. (2d) —.

As to the second liability the bank was ordinarily authorized and bound to honor checks drawn by authorized persons on the Wichita Royalty Company account. These were mostly signed by Scannell as Secretary and Treasurer, but sometimes by Peckham as trustee. Either was authorized to sign checks. Peckham's sole authority over the trust did not of course extend to the use of its funds for his personal benefit. But checks for money the trust owed him might rightly be made out to him. His salary, to the amount of $30,000 during the six years, was thus paid. He was en- [fol. 2080] titled to compensation by the terms of the declaration of trust, and no attack is made upon the amount fixed or the method of fixing it. It is urged however that he was during much of the time acting unfaithfully and had forfeited his compensation. This may be true on an accounting between him and his trust, but it was not the part of the bank to judge of the faithfulness and diligence of Peckham, and to refuse payment of his salary checks if it thought him unworthy. A case of conspiracy between Peckham and the bank to defraud the trust might charge the bank with liability for honoring these salary checks, but not the mere knowledge of transactions by Peckham which might seem questionable.

Peckham received many checks drawn on the Wichita Royalty Company account in payment for oil and gas properties first acquired in his name or for which he advanced the money. He made a personal profit on some of them. These were finally put in the name of the trust, and when Peckham was paid minute statements of each transaction were entered on the records of the trust, and the purchase of the properties reported to the stockholders, though the fact that they were acquired by or through Peckham himself was not. Some of the purchases proved profitable to the trust and some did not. Scannell, Secretary and Treasurer, was familiar with all the circumstances. In such transactions the trustee was bound to the utmost good faith, he was accountable to the trust for all profits

he made in trades for it, and when he sold to it property which he owned the sale was voidable at the option of the trust. But the Bank was under no such rule of accountability for such transactions to which it was no party. The purchases by the trustee from himself were not void but voidable. Hammond vs. Hopkins, 143 U. S. 224. The bank could not question them. Many of them turned out for the benefit of the trust. Only knowledge of a most bare-[fol. 2081] faced fraud would have justified the bank in refusing to honor a check drawn to Peckham in payment for such property.

Checks drawn on the trust account in favor of the bank itself and by oral direction of Peckham put to his individual credit present a more difficult problem. If the trust owed the bank nothing, the bank should not have received them or should have credited them back to the drawer. Anything the trust owed Peckham should regularly have been paid by check payable to him. That a bank is liable as not having handled the trust account according to duty in crediting to the trustee's individual account checks made payable to the bank itself is held in Robbins vs. Passaic Natl. Bank, 109 N. J., L. 250, 82 A. L. R. 1368. The exact facts concerning each of such checks ought to be ascertained in this case.

Thirdly, the liability of the Bank for paying to others checks drawn by Peckham on his individual account when the payment was made out of trust funds commingled therein is fully discussed and our views expressed in St. Andrew Bay R. Co. vs. Barnes, — Fed. (2d) —. The most recent expression of the Supreme Court of Texas is largely concordant. Quanah A. & P. Ry. Co. vs. Wichita State Bank, 93 S. W. (2d) 701. To raise such a liability it is necessary to show that trust funds were in fact misused, and that the bank actually knew it or had knowledge of such facts as to make its actions in bad faith. We do not subscribe to the doctrine that if the bank knew of one act of misconduct of the trustee it became liable for all subsequent misconducts of the account whether it knew of them or acted in bad faith touching them, or not. The bank must use good faith in honoring checks of a customer who is a trustee, but is liable for money diverted from his trust to others only when, to employ the usual phrase, it knowingly assists [fol. 2082] him to misapply it. Each transaction sought to be thus charged to the bank raises two questions of fact:

Was the trustee in this transaction diverting trust money? Did the bank know he was, or did it know facts which support the sole inference that he was? Of course the recurrence of many suspicious transactions may require that inference when a single one would not. A single known misapplication, even in favor of the bank itself, will not as a matter of law require the bank to discontinue the account or to audit the account each time thereafter it pays a check to see whether it may be paying trust money to one who is not known to be a trust creditor. That the bank thus becomes the guardian of the trust is said to be established by Bischoff vs. Yorkville Bank, 218 N. Y. 106. We doubt if the case goes so far. It lays emphasis on the facts that the personal account was known then to consist wholly of trust funds and that the transactions were such as to indicate a system of defalcations. In the case of U. S. F. & G. Co. vs. Adone and Lobit, 104 Tex. 379, also relied on by the Supreme Court of Texas, the customer cashed a certificate of deposit for $12,000 payable to him as guardian, paid the bank $7,000 on an individual note, and on the same day checked out the balance in his individual name to his brother. The bank was of course held to restore what it got. What was paid to the brother was virtually part of the same transaction and partook of its color, and the bank was held for that also. In Steere vs. Stockyards Natl. Bank, 113 Tex. 287, several times cited, nothing was involved but restoration of what the bank itself took; as is true of Central Natl. Bank vs. Connecticut Mutual Ins. Co., 104 U. S. 67. We do not think the rule of liability as a matter of law for all diversions to others accomplished through the checking account after knowledge by the bank of one, is well supported. The test continues to be for each transaction actual knowledge and good faith under all the circumstances.

[fol. 2083] The investment by Peckham of the trust funds in the purchase of his half interest in the Marlborough Addition, not being oil or gas property, in addition to being voidable as a transaction with himself, appears to be beyond the scope of the trust. Scannell, well knowing the facts though he says he did not know the law arising on them, when he became successor trustee did all he could to ratify and adopt and reorganize this transaction, and persisted in it for more than a year. He made the note and indorsement upon which the old bank is now suing. He could waive the pre-

sumed fraud in the purchase by Peckham as trustee from himself, but as respects authority to buy town lots for the trust Scannell had no more power to ratify than Peckham had to invest. We do not perceive how the trust, whose scope was apparent from the public records, could be bound for moneys knowingly advanced to this town lot enterprise by the bank, unless Scannell's adoption of it was for the purpose of saving the trust's money already invested in it by Peckham, he being dead insolvent. Perhaps this would have been an authorized business of the trust, just as a National Bank prior to 1916 might take land to save a doubtful obligation though it could not lend on it originally. Unless the facts support some such extraordinary power, it would seem that Scannell has not bound the trust by his signatures in this connection. Whether he has bound himself is another question.

The liabilities of Harrell are similar to but not identical with those of the bank. Whatever he got personally of trust funds as to which he is not a bona fide purchaser without notice he must restore. What he as the bank's agent took for the bank he is responsible for only if he knowingly aided in a diversion. A like rule would apply where he is sought to be held along with the bank for paying Peckham's individual checks out of trust funds.

[fol. 2084] We decide nothing on the question of limitation. We have not sought to develop all questions of law and we have not attempted to adjudge any question of fact. The facts we leave open for full determination in the District Court, with power in its discretion to hear further evidence where it is thought necessary to reach the truth. The sale of the old bank's assets may stand.

The decree is accordingly reopened except as to the sale of the old bank's assets, and the cause is remanded for further proceedings not inconsistent with this opinion, without costs of appeal allowed to either party.

[fol. 2085] JUDGMENT

Extract from the Minutes of March 23rd, 1938

No. 8541

WICHITA ROYALTY COMPANY et al.

versus

CITY NATIONAL BANK OF WICHITA FALLS et al.

(And Reverse Title)

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Texas, and was argued by counsel;

On consideration whereof, It is now here ordered, adjudged and decreed by this Court, that the decree of the said District Court in this cause be, and the same is hereby reopened except as to the sale of the old bank's assets; and that this cause be, and it is hereby, remanded to the said District Court for further proceedings not inconsistent with the opinion of this Court, without costs of appeal allowed to either party.

[fols. 2086-2087] PETITION FOR REHEARING—Filed April 11, 1938

NO. 8541

IN THE

United States Circuit Court of Appeals

FIFTH CIRCUIT
NEW ORLEANS, LOUISIANA

WICHITA ROYALTY COMPANY ET AL., *Appellants,*

versus

CITY NATIONAL BANK OF WICHITA FALLS, TEXAS, ET AL., *Appellees.*

(And Reverse Title)

Appealed from the District Court of the United States for the Northern District of Texas Wichita Falls Division

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MAY IT PLEASE THE COURT:

Wichita Royalty Company moves the Court for a Rehearing upon the matter of costs, and respectfully shows:

1. That the $5,272.50 to print the record was paid by Wichita Royalty Company.

2. That the Clerk was paid his fees by Wichita Royalty Company.

3. That the Bank appealed its case upon the record of Wichita Royalty Company and at the expense of Wichita Royalty Company.

4. That the rules of Court require an order allowing costs to the prevailing party on appeal, unless otherwise directed and the cause was remanded upon an opinion satisfactory to the trust.

5. That the law of the case was held binding on the trial court, and the remand was made necessary by the trial court's failure to find facts specially.

Unless the Court contemplates withholding the allowance of costs pending a new decision, permitting the trial court to adjudge costs of appeal, then it seems Wichita Royalty Company should be allowed its costs, or in any event, they should be divided.

Respectfully submitted,

RAY BLAND,
GUY ROGERS,
Attorneys for Wichita Royalty Company.

KILGORE & ROGER,
Of Counsel.

[fol. 2088] ORDER DENYING REHEARING

Extract from the Minutes of April 18th, 1938

No. 8541

WICHITA ROYALTY COMPANY et al.

versus

CITY NATIONAL BANK OF WICHITA FALLS et al.

(And Reverse Title)

It is ordered by the Court that the petition for rehearing filed in this cause be, and the same is hereby, denied.

[fols. 2089-2093] PETITION FOR LEAVE TO FILE PETITION FOR REHEARING AND PETITION FOR REHEARING—Filed May 23, 1938

NO. 8541

IN THE

United States Circuit Court of Appeals

FOR THE FIFTH CIRCUIT, AT NEW ORLEANS

WICHITA ROYALTY COMPANY ET AL.,
Appellants and Cross-Appellees,

versus

CITY NATIONAL BANK OF WICHITA FALLS ET AL.,
Appellees and Cross-Appellants.

PETITION FOR LEAVE TO FILE MOTION FOR REHEARING

TO SAID HONORABLE COURT:

In view of the Supreme Court's decision April 25th, 1938, in *Erie Railroad Company v. Thompkins*, 82 L. Ed. 787, Law Edition Advance Sheet opinions of May 9, 1938, being subsequent to the decision in this case, changing the rule of law to be pronounced and applied by Federal Courts, making the law of the State the law of the case, and since this Court may control its de-

cisions during the term at which they are rendered (Hughes Federal Practice, Sec. 3631, Vol. 6, Page 153; *Davis v. Preston*, Tex. Com. App., 35 S. W. (2d) 403), request is made that Appellant be permitted to file the Motion tendered herewith.

Respectfully submitted,

RAY BLAND,
GUY ROGERS,
Wichita Falls, Texas.

By .....

Of Counsel:
KILGORE & ROGERS,
Wichita Falls, Texas.

NO. 8541

IN THE

United States Circuit Court of Appeals

FOR THE FIFTH CIRCUIT, AT NEW ORLEANS

WICHITA ROYALTY COMPANY ET AL.,
Appellants and Cross-Appellees,

versus

CITY NATIONAL BANK OF WICHITA FALLS ET AL.,
Appellees and Cross-Appellants.

(And Reverse Title)

MOTION FOR REHEARING

MAY IT PLEASE THE COURT:

Apellant - Appellee, Wichita Royalty Company, moves the Court to withdraw and/or amend its mandate and to change its opinion so that the rules set forth by the Supreme Court of Texas *in this very case* will be pronounced as the law of the case. Such is the present rule pronounced by the Supreme Court of the United States in *Erie Railroad Company v. Tompkins*, 82 L.

Ed. 787, Law Edition Advance Opinions of May 9, 1938. This opinion holds:

> "Except in matters governed by the Federal Constitution or by Acts of Congress, the law to be applied in any case is the law of the State. And whether the law of the State shall be declared by its Legislature in a statute or by its highest court in a decsiion is not a matter of federal concern."

The Court in this case has decided certain principles of commercial law, differing in certain respects from the decision of the Supreme Court of Texas *in this very case*. These rules are laid down for the guidance of the District Court on the retrial of the case. Whether or not they are binding may become a question, the rule now being that the law of the state is the law of the case.

Since the Supreme Court of the United States has changed the rule of decision subsequent to the rendition of judgment herein, making the law of the state the law of the case, this Court should recall its mandate and so amend the same as to make the law as decided by the Supreme Court of Texas the law of the case, thus conforming to the present federal law.

This Court would follow the Supreme Court of the United States on a second appeal. There is no necessity of awaiting the possibility of a second appeal in order to apply the law as pronounced by the Supreme Court of the United States. This case has been in the Courts for seven years. Anything this Court can do to hasten a final and correct judgment should be done.

While we recognize that we may not file this motion as a matter of right, yet this Court still has control over its judgments until the end of the term. *Hughes Federal Practice*, Section 631, Volume 6, p. 153; *Davis v. Preston* (Tex. Comm. App.) 35 S. W. (2d) 403.

Respectfully submitted,

RAY BLAND,
GUY ROGERS,
Wichita Falls, Texas.

By

Of Counsel:
KILGORE & ROGERS,
Wichita Falls, Texas.

[fol. 2094] OPINION ON SECOND MOTION FOR REHEARING—
Filed June 10, 1938

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 8541

WICHITA ROYALTY COMPANY et al., Appellants and Cross-Appellees,

versus

CITY NATIONAL BANK OF WICHITA FALLS et al., Appellees and Cross-Appellants

(And Reverse Title)

Appeal and Cross-Appeal from the District Court of the United States for the Northern District of Texas

On Motion for Second Rehearing

(June 10, 1938)

Before Sibley and Holmes, Circuit Judges, and Mize, District Judge

SIBLEY, Circuit Judge:

A motion for rehearing made in due time was overruled and the mandate sent down. The present motion, not within our rules on the subject, is based on the extraordinary ground that whereas the Supreme Court in Erie Railroad [fol. 2095] Company vs. Tompkins, — U. S. —, and cases following it, has established that in reference to transactions governed by the law of a State the decisions of the Supreme Court of that State are to be followed in the federal courts, though no State statute is involved and notwithstanding the question is one of what has heretofore been referred to as "general law", in the decision in this case we have not followed the decision of the Supreme Court of Texas made on this very case.

The term at which our judgment was rendered has not closed and we have power to recall the mandate and rehear the case, though too late under our rules regularly to do so.

We have committed ourselves in this case and in Seagraves vs. Wallace, 69 Fed. (2d) 163, to a liberal view of the rule of the law of the case, whereby the appellate court may and should correct plain error in its own decisions in a litigation until that litigation is finally closed. We would therefore on a later appeal in this litigation be faced with a re-examination of what we have said, and we may as well face it now. We accordingly have considered this motion on its merits, as though made in time; and the state of the decisions of the Texas Supreme Court having already been fully argued and nothing being proposed to be added on that score, we find no occasion to change our conclusions or to grant a rehearing to that end.

We of course retract anything in the opinion that may indicate a purpose not to be bound by the law of Texas as established by the decisions of the State courts. We think we have arrived at proper conclusions under the law of Texas, though we did not wholly accept the opinion in this case, — Tex. —, 89 S. W. (2d) 394, written by the Commission of Appeals. We adhere to our view that as to that opinion, since by removal of the litigation to the federal courts we have become the appellate court therefor, we have the same right [fol. 2096] and duty to declare or redeclare the law of this case that the Supreme Court of Texas would now have if the case had not been removed. We believe the Supreme Court of Texas would probably agree with our conclusions in view of what it has since done. The case of Quanah A. & P. Ry. Co. vs. Wichita State Bank, — Tex. —, 89 S. W. (2d) 385, was considered along with that of The Wichita Royalty Company and decided at the same time by the Commission of Appeals. Both decisions held the bank to a strict liability such as Wichita Royalty Company contends for. On rehearing the Quanah case the Supreme Court withdrew entirely the opinion, and on elaborate examination of the general authorities decided the contrary and established as the law of Texas the rules applied generally elsewhere, — Tex. —, 93 S. W. (2d) 701. This demonstrates that there is no peculiar law in Texas on this subject. Indeed, by statute of Texas the common law as declared in the United States was in 1840 made of force, except as the legislature might alter it. Civil Stats. of 1925, Art. 1; Grigsby vs. Reib, 105 Tex. 597, 153 S. W. 1124; Great Sun Life Ins. Co. vs. Austin, 112 Tex. 1, 243 S. W. 778. The opinion in the Wichita Royalty Company case was reviewed and explained as "an action where it

was charged that the bank actively participated in the spoliation of the trust fund and knowingly received a part of the fund to itself in payment of the trustee's individual debt to it." We have held the bank liable in so far as it did that. Since in the Quanah case the Supreme Court holds that the law of Texas is what for want of a better term we may call the general law on the subjects involved here, and accordingly adopts rules generally followed in other States, we [fol. 2097] think our conclusions are in line with the law of Texas and that there is no occasion for a rehearing.

Rehearing denied.

[fol. 2098] ORDER DENYING SECOND MOTION FOR REHEARING

Extract from the Minutes of June 10th, 1938

No. 8541

WICHITA ROYALTY COMPANY et al.

versus

CITY NATIONAL BANK OF WICHITA FALLS et al.

(And Reverse Title)

It is ordered by the Court that the second petition for rehearing filed in this cause be, and the same is hereby, denied.

[fol. 2099] CLERK'S CERTIFICATE

UNITED STATES CIRCUIT COURT OF APPEALS, FIFTH CIRCUIT

UNITED STATES OF AMERICA:

I, Oakley F. Dodd, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the pages numbered from 2069 to 2098 next preceding this certificate contain full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion of the United States Circuit Court of Appeals for the Fifth Circuit, in a certain cause in said Court, numbered 8541, wherein Wichita Royalty Company, et al., are appel-

lants and cross-appellees, and City National Bank of Wichita Falls, et al., are appellees and cross-appellants, as full, true and complete as the originals of the same now remain in my office.

I further certify that the pages of the printed record, Volumes I, II, and III, numbered from 1 to 2068 are identical with the printed record upon which said cause was heard and decided in the said Circuit Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of the said United States Circuit Court of Appeals, at my office in the City of New Orleans, Louisiana, in the Fifth Circuit, this 22nd day of July, A. D. 1938.

Oakley F. Dodd, Clerk of the United States Circuit Court of Appeals, Fifth Circuit. (Seal United States Circuit Court of Appeals, Fifth Circuit.)

[fol. 2100] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 17, 1938

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

FILE COPY

Office - Supreme Court, U. S.
FILED
AUG 30 1938
CHARLES ELMORE CROPLEY
CLERK

NO. 314

IN THE

Supreme Court of the United States

OCTOBER TERM, 1938

WICHITA ROYALTY COMPANY ET AL, *Petitioners,*

versus

CITY NATIONAL BANK OF WICHITA FALLS, ET AL,
Respondents.

Petition for Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit

---

J. T. MONTGOMERY,
Wichita Falls, Texas,
Of Counsel.

J. T. MONTGOMERY,
Wichita Falls, Texas,
RAY BLAND,
Wichita Falls, Texas,
GUY ROGERS,
Wichita Falls, Texas,
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BAILEY—WICHITA FALLS

INDEX

	Page
Summary of Matter Involved	1- 9
Questions Involved	9
Reasons Relied on for Allowance of Writ	9-13

AUTHORITIES CITED

Bischoff v. Yorkville Bank, 218 N. Y. 106 5

Erie Ry. Co. v. Tompkins, 82 U. S. 787 5

Q. A. & P. Ry. Co. v. Wichita State Bank and Trust Co., 127 Tex. 407; 93 S. W. (2d) 701 ... 5, 8, 9

Ruhlin v. New York Life Ins. Co. 82 U. S. 823 12

Wichita Royalty Co. v. City National Bank, 127 Tex. 158; 93 S. W. (2d) 143, 89 S. W. (2d) 394 ..... 2, 5, 9

Williams v. Conger, 125 U. S. 397 ..... 9, 10

—2100

NO._____

IN THE

Supreme Court of the United States

OCTOBER TERM, 1938

WICHITA ROYALTY COMPANY ET AL, *Petitioners,*

versus

CITY NATIONAL BANK OF WICHITA FALLS, ET AL,
Respondents.

Petition for Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit

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The Petition of Wichita Royalty Company for the issuance of a Writ of Certiorari to the Circuit Court of Appeals, for the Fifth Circuit, respectfully represents:

I

SUMMARY OF THE MATTER INVOLVED

The Respondent, The City National Bank of Wichita Falls, sued Petitioner Upon notes in 1930 (R. 2070). Petitioner, a trust association, answered and filed a Cross Action setting up the former Trustee's breaches of trust in the matter of numerous checks by which trust moneys were transferred direct from the

trust account to the personal account of the Trustee and applied partly to the Bank and partly to the Trustee's personal use (R. 1884-1912; 2070). The case was decided by the Supreme Court of Texas upon the holding:

> "It appears conclusively that shortly after Peckham began making the transfer of trust funds to his personal account, he began making payments on his personal indebtedness to the Bank out of the ocmmingled funds. * * *
>
> "It will be noted that the Bank, in Adoue & Lobit case, was held liable not only for that part of the trust fund received in payment of the fiduciary's debt, but also for the $5,000.00 thereafter checked out by him to another. The Court on rehearing expressly refused to give controlling effect to the Bank's receiving part of the fund, basing the recovery of the $5,000.00 upon the sole ground that the act of the Bank in placing the trust funds to the personal account of the fiduciary, whence they were checked out for other than a trust purpose, was 'obviously wrongful', and that the bank 'must bear the resulting consequences.'
>
> "The Bank complains that the rule is harsh in view of the ration between the amount of business transacted and the amount of Peckham's default, and urges that it did not have actual knowledge of the defalcations. It cannot be heard to say after participation in Peckham's wrong to its own substantial advantage that the benefit received was relatively small, or that it was not consciously participating with him. * * *
>
> "In the case of Rischoff vs. Yorkville Bank,

supra, only two checks, one for $765.00 and the other for $1,000.00 were drawn on the account and applied to the debt due the bank. The bank received only $1,765.00 to be applied on executor's debt to it, but was held liable for $12,000.00 principal, and $3,000.00 interest. It was held liable for every check drawn on the commingled account after it received the first payment on its debt, some of which were issued and presented more than three years after the first application so made. * * *

"* * * The cases relied on by counsel for the Bank, holding on the particular facts of those cases that liability cannot be predicated upon the crediting of trust funds to the trustee's personal account, are distinguishable for the reason, among others, that in none of them was the transfer credited after the bank had been guilty of participating with the trustee in a known breach of trust.

"In the present case, the bank, after being charged with knowledge of Peckham's dishonest dealings continued to credit Peckham's personal account with checks drawn on the trust account, and persisted in its course of dealings with respect to the two accounts. Having incurred the burden of ascertaining whether subsequent expenditures made by the trustee from the commingled funds were for authorized trust purposes, it cannot effectively complain of the weight of that burden. * * * *

"All of these improper withdrawals and misapplications of trust funds took place after the Bank had participated with Peckham by accepting trust funds on his personal debts to the bank after Harrell was charged with knowledge thereof. * * * It was not necessary, in order to establish partici-

pation of the bank and Harrell with Peckham, to show actual knowledge on their part of Peckham's purposes as they relate to the various transactions in question. Steere vs. Stockyards Nat. Bank, supra. The Bank and Harrell had constructive knowledge of Peckham's dishonesty, and inquiry pursued with reasonable diligence would have disclosed the facts showing Peckham's lack of authority and breaches of trust. First Nat. Bank of Houston vs. Weiner (Tex. Civ. App.) 253 S. W. 615; Miller & Co. v. Hobdy (Tex. Civ. App.) 159 S. W. 96; Coder v. McPherson (C. C. A.) 152 F. (2) 951; Essex Nat. Bank v. Hurley (C. C. A.) 16 F. (2d) 427. * * *

"It is apparent from what has been stated that the amount of the bank's liability is the difference between the total amount of the deposits for which Packham's personal account received credit after he began commingling trust funds with his own on October 8, 1925, and the total amount of withdrawals therefrom which the Bank may show were used for authorized trust purposes. It conclusively appears that the bank is not entitled to credit for expenditures out of the commingled account for the purchase and improvement of Marlborough, or those transactions wherein Peckham acted in the dual role of buying as trustee for himself personally. * * * *

"* * * The amount of Harrell's liability to the trust is the aggregate amount of trust funds paid out on the transactions in question in which he was personally interested, and which Scannell subsequently repudiated with tenders as pleaded and shown. * * *

"The judgment of the trial court and Court of Civil Appeals on both the direct and cross-actions are reversed, and the case is remanded for another trial in accordance with instructions given herein."

The case was reversed and remanded by the Supreme Court of Texas for rendition of judgment upon the above quoted principles (R. 1884-1912) 127 Tex. 158; 89 S. W. (2d) 394.

Motion for Rehearing was overruled by the Supreme Court of Texas, without modifying the above holdings . 127 Tex. 158, 93 S. W. (2d) 143. The opinion in *Q. A. & P. Ry. Co. v. Wichita State Bank & Trust Co.*, cited by the Circuit Court of Appeals, was released the same day the Motion for Rehearing was denied in this case. In fact, the opinion in the Q. A. & P. case expressly approves the holding in the instant case. 127 Tex. 407, 93 S. W. (2d) 701.

The old bank became insolvent, new parties were made, and the case was removed to the federal court. On appeal the Circuit Court of Appeals remanded the case for special findings to be applied to principles of law differing in essential particulars from those decided by the Supreme Court of Texas above (R. 2073).

These differences were sharply drawn. The rule of the Bischoff v. Yorkville Bank case, employed as a yardstick by the Supreme Court of Texas, was expressly disapproved by the Circuit Court (R. 2082). In its place the so-called "bad faith" doctrine was invoked, on the holding that despite the Bank's direct receipt of a part of the diverted fund it could not be held for

subsequent withdrawals unless it had actual knowledge of them (R. 2081, 2082).

The Texas Court, following the lead of what it conceived to be the weight of the authorities and the better rule, passed over the Bank's acquiescence in the irregular transfers of funds from the trust account to the personal account of the trustee, but refused its sufference beyond the point where the Bank received its first benefit. Charged at that time with notice of the wrongful use of the transferred funds, the Bank could no longer presume that the trustee would thereafter withdraw them for legitimate trust purposes. Thence forward the several withdrawals from the personal account were to be treated as a unit and not as isolated transactions (R. 1894-1904). The Circuit Court, allowing recovery for the amounts received by the Bank, follows rigidly its test of "bad faith" and requires a finding of actual participation or knowledge by the bank covering the purpose and use of each withdrawal. The situation is left as it was before the Bank began to share in the fund. Each transaction is severed from those preceding it and, absent guilty knowledge in each, the bank is absolved (R. 2081-2082).

This basic difference in the principles pronounced by the two courts is carried forward in their respective holdings on the Bank's accounting liability. The Texas Court refuses to give the Bank credit for the trust funds withdrawn from the commingled personal account after the Bank's reception of payment and used in "those transactions wherein Peckham acted in the dual role of buying as trustee from himself person-

ally." (R. 1909.) Such transactions, being fraudulent as a matter of law, were properly repudiated by the succeeding trustee (R. 1904). Since, by its participation in the diverted fund, the Bank was subjected to the duty of seeing to a proper use of moneys subsequently checked out, it could not account for them through the dual dealings of the trustee (R. 1902, 1909). The Circuit Court takes sharp issue. It recognizes the voidable character of these transactions, but relieves the Bank from their consequences on the ground that the Bank could not question them when they were entered into. (R. 2080). The matter is made to turn upon the fact that the Bank was not a party to these lease transactions. The Texas Court, with an eye to the initial step—the wrongful transfers and withdrawals—declines to sever cause and result. That Court holds that after the Bank's acceptance of trust money from the commingled account it was obliged to investigate the purpose of later withdrawals before honoring checks drawn to the trustee or others. Its failure to discharge that obligation could not be excused by the fact that the Bank could not undo the wrongful transactions into which the money went.

The net result of these differences on the applicable law is that by the Circuit Court's decision recovery is limited (1) to the amounts actually received by the Bank (R. 2079); (2) the amounts represented by the checks payable to the Bank and not properly accounted for (R. 2081); and (3) such as were appropriated with the actual knowledge of the Bank (R. 2081). In striking an account the Bank is to be credited with sums in-

volved in all transactions between the trustee personally and his trust except his purported sale of Marlborough (R. 2080, 2083). This last is, of course, excluded for the obvious reason that it was completely beyond the scope of the trust, as evidenced by the written Declaration (R. 2083).

The Petitioner filed Motion for Rehearing on the sole ground that under *Erie Ry. Co. v. Tompkins*, 82 U. S. 787, the decision of the Texas Court in this case was binding in every particular upon the Circuit Court (R. 2091). The Motion was overruled by written opinion filed June 10, 1938 (R. 2094). Departure from the decision of the Supreme Court of Texas was admitted but justified on the ground that the Circuit Court sat as the appellate tribunal on removal from the State Court and was vested with power to redeclare the governing law. Speculating on what the Supreme Court of Texas would probably do, the decision by that Court in *Q. A. & P. Ry. Co. v. Wichita State Bank & Trust Company*, 127 Tex. 407, 93 S. W. (2d) 701, was construed as being in accord with the "general" law (R. 2096). The conclusion was that since the Circuit Court's original opinion stated the "general" law, it was therefore in line with the law of Texas (R. 2097). This weighing of probabilities ignores the essential fact that the Motion for Rehearing in the instant case was overruled by the Supreme Court of Texas on the same day that the Court's opinion was delivered in *Q. A. & P. Ry. Co. v. Wichita State Bank & Trust Company, supra.* In a short written opinion the Texas Court expressly reaffirmed all principles set forth in its original opinion.

Wichita Royalty Company et al v. City National Bank of Wichita Falls et al, 127 Tex. 158, 93 S. W. (2d) 143. Satisfaction with such principles is particularly noted by Justice Critz in the *Quanah* case. *Q. A. & P. Ry. Co. v. Wichita State Bank & Trust Company*, 127 Tex. 407, 93 S. W. (2d) 709.

QUESTIONS INVOLVED

1. Whether the Circuit Court of Appeals was bound by the law of Texas, as defined in this case by the highest Court of that State prior to removal of the cause.

2. Whether it was permissible for the Circuit Court of Appeals to ignore the decision of the Supreme Court of Texas in this cause and determine the applicable State law by a forecast based on a contemporaneous decision involving different, though related, principles, as to what the State Court might probably do were the case again presented for decision.

REASONS RELIED ON FOR ALLOWANCE OF THE WRIT

1. *In rendering its decision the Circuit Court decided an important question of local law in a way probably in conflict with the applicable local decisions.*

On original hearing the Circuit Court denied Petitioner's claim that the decision of the Texas Supreme Court became the law of the case, binding upon the Federal Court after removal (R. 2076). An effort was made to distinguish *Williams v. Conger*, 125 U. S.

397, on the ground of its being a land case in which the State law had peculiar weight (R. 2077). In recognizing the compulsion of the decisions of the Supreme Court of Texas, this Court did not so qualify its holding in the Conger case:

> "The Removal of the cause from the State Court does not put us in the position of a Court of review over the Supreme Court of Texas. When it acted, it was the highest court that could act in the cause, and stood in precisely the same position that we now stand. Its action must be accepted by us as that of a court having plenary and final jurisdiction."

Wholly aside from the rule of *Erie Railroad Company v. Tompkins*, 82 U. S. 787, the Circuit Court disregarded what was "local" law because it was the "law of the case," and thereby threw itself into direct conflict with the decision of this Court in *Williams v. Conger, supra.*

The opinion on rehearing but served to aggravate the Court's position. Its claimed right to differ with the State Court's decision and to act as that Court's successor in modifying that decision is reiterated (R. 2095-96). In deference to *Erie Railway Company v. Tompkins, supra*, any effort to deviate from the law of Texas is disclaimed (R. 2095). For the first time it is suggested that the Texas Supreme Court's decision in this case does not represent the law of Texas (R. 2095). The original opinion contained no such intimation. The contrary is reflected in the studious effort to circum-

vent its binding effect as "the law of the case" and in the frank concession that "no doubt it would have been accepted as the law of the case on the same facts upon a retrial in the State Court, and ought to have been so regarded in the District Court" (R. 2076).

Despite the Texas Court's pronouncement in this very case, on all issues as between the old bank, J. T. Harrell and Petitioner, the Circuit Court resorts to the Texas Court's contemporaneous decision in *Q. A. & P. Ry. Co. v. Wichita State Bank & Trust Company, supra*, as indicating that the "Supreme Court of Texas would probably agree with our conclusions in view of what it has since done" (R. 2096).

As heretofore pointed out, a grave mistake was committed in treating the decision in the *Quanah* case as later in time than the case at bar. The Motion for Rehearing was overruled on written opinion in the present case on the same day that the opinion was delivered in the *Quanah* case. Each opinion expressly reaffirmed the principles laid down in the instant case. Furthermore, the *Quanah* case involved nothing more than straight deposits of bills of exchange payable to one Hawkins as Treasurer of the Q. A. & P. Ry. Co., to the personal account of said Hawkins, and his individual withdrawal and dissipation of the funds so credited. The Bank had no notice save from the form of the checks and the manner of their deposit. No part of the fund was received by the Bank. There was no system of transfers from a trust or corporate account to a personal account in the same Bank. These distinctions are carefully stressed in the Court's opinion—particu-

larly the fact that in the present case the bank "knowingly received a part of the fund to itself in payment of the trustee's individual debt to it." 127 Tex. 407; 93 S. W. (2d) 709.

It is firmly believed that the Supreme Court's decision in this case represents the only State law to be applied by the Federal Court after its removal. No other Texas case undertakes to repudiate or modify that decision. The Circuit Court's refusal to follow can not be reconciled with the mandate of this Court in *Erie Railway Co. v. Tompkins*, 82 U. S. 787, and *Ruhlin et al v. New York Life Insurance Co.*, 82 U. S. 823. That failure may not be excused by the Court's speculative conclusion as to what the Texas Court might say if the case were again before it for decision. Such admitted substitution of prophecy for precedent could hardly come within the requirement imposed by this Honorable Court in the *Ruhlin* case. It was there said:

> "The parties and the Federal Courts must now search for and apply the entire body of substantive law governing an identical decision in the State Court."

The question is important. Upon it depends the standard of care to be exercised by commercial institutions in Texas—whether that standard is to be ever passive or whether it becomes active upon notice, whether a bank once charged with notice of a trustee's infidelity may thereafter deal with him as before. The question involves the general commercial law of Texas, applicable to all banks in the handling of fiduciary ac-

counts. A vast amount of money is involved. Suit was for $200,000.00, made up of numerous checks over a long period of time. It is important that there be not a federal rule of decision for Texas and another and different rule by the Supreme Court of the State. Only this Court can resolve the confusion that necessarily results.

For the above reasons, your Petitioner prays for the issuance of a Writ of Certiorari under the Seal of this Court directed to the United States Circuit Court of Appeals for the Fifth Circuit, commanding said Court to certify the above cause to this Court for review and a proper determination of the questions involved, and for any and all other relief to which it may be entitled in the premises.

The mandate having issued, prayer is made that further proceedings be stayed.

Respectfully submitted,
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NO. 314

IN THE

Supreme Court of the United States

OCTOBER TERM, 1938.

WICHITA ROYALTY COMPANY, ET AL, *Petitioners.*

versus

CITY NATIONAL BANK OF WICHITA FALLS, ET AL,
Respondents.

BRIEF OF PETITIONERS

J. T. MONTGOMERY, Wichita Falls, Texas,
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RAILEY—WICHITA FALLS

INDEX

Page

Subject Index

Citations of Opinions 1- 2

Jurisdiction 2

Statement of the Case 3-11

Specification of Errors 11-12

Summary of Argument 12

Argument:

Point 1—The Court of Civil Appeals was bound by the law of the case as promulgated by the State Supreme Court prior to removal 12-15

Point 2—The governing State law, binding upon the Circuit Court of Appeals, is set forth by the State Court in its decision of this case, without variance by any ot er State decision 15-23

Appendix 24-32

Table of Statutes and Rules Cited

Judicial Code, Sec. 240 (a) U. S. C. A. 347 2

Equity Rule 70½ 12

Table of Cases Cited

City National Bank of Wichita Falls, Texas v. Wichita Royalty Company et al, (D. C. N. D. Tex.) 18 Fed. Sup. 795 ..... 2, 5, 6

Erie Ry. Co. v. Tompkins, 82 Law Ed. Adv. Ops. 787 ..... 11, 15, 16, 23

Hill v. Wiley, 3 N. E. (2d) 1015 18

Inter State Circuit, Inc., Texas Consolidated Theatres, Inc., Karl Hoblitzelle et al v. United States of America. 82 Law Ed. Adv. Ops. 772 12

Messinger v. Anderson, 225 U. S. 436 15

Quanah A. & P. Ry. Co. v. Wichita State Bank and Trust Company, 127 Tex. 407; 93 S. W. (2d) 701 ..... 14, 16, 17, 19, 20

Page

Robbins v. Passaic National Bank, 109 N. J. L. 250, 82 A. L. R. 1368 22

Ruhlin v. New York Life Insurance Company, 82 Law Ed. Adv. Ops. 823 ..... 11, 16, 23

Steere v. Stockyards National Bank, 113 Tex. 287; 256 S. W. 586, 258 S. W. 1042 7

United State Fidelity and Guaranty Company v. Adoue & Lobit, 104 Tex. 379; 137 S. W. 648; 138 S. W. 383 19

Waialua Agriculture Co. Ltd. v. Christian, 83 Law Ed. Adv. Ops. 42 15

Wichita Royalty Company et al v. City National Bank, 127 Tex. 158; 89 S. W. (2d) 394; 93 S. W. (2d) 143 ..... 1, 3, 4, 8, 9, 10, 11, 14, 17, 18, 20, 21

Wichita Royalty Company et al v. City National Bank of Wichita Falls, et al (C. C. A.) 95 Fed. (2d) 671; 97 Fed. (2d) 249 ..... 2, 10, 11, 16, 23

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BRIEF OF PETITIONERS

I

CITATION OF OPINIONS

This case was first tried in the State Courts of Texas. Wichita Royalty Company, et al vs. City National Bank, et al. (R. 1884-1912) 127 Tex. 158; 89 S. W. (2d) 394; on rehearing, 93 S. W. (2d) 143.

Thereafter new parties were made and the case was removed to the United States District Court for the Northern District of Texas, Wichita Falls Division. (R. 88-115.) Motions to remand were severally denied. (R.

126-166.) District Judge William H. Atwell filed the Trial Court's opinion on April 9, 1937, appearing at page 1922 of the Record. It is reported in 18 Fed. Sup. 795.

The original opinion of the Circuit Court of Appeals for the Fifth Circuit (Circuit Judges Sibley and Holmes, and District Judge Mize, opinion by Judge Sibley) was filed March 23, 1938, appears at page 2069 et seq. of the Record, and is reported in 95 Fed. (2d) 671. An original Petition for Rehearing was filed April 11, 1938. (R. 2083.) It was denied by Order dated April 18, 1938. (R. 2085.) A Second Motion for Rehearing was filed May 23, 1938, under Petition for Leave to File. (R. 2087, et seq.) The Motion was entertained by the Court with opinion denying rehearing by Judge Sibley, filed June 10, 1938, and appears at pages 2092, et seq. of the Record. It is reported in 97 Fed. (2d) 249.

II

JURISDICTION

1. The jurisdiction of this Court is sustained under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925; 28 U. S. C. A. Section 347.

2. The judgment of the Circuit Court of Appeals was rendered on March 23, 1938. (R. 2081.) Petitioners' Second Motion for Rehearing was entertained by the Court, (R. 2089), and overruled with written opinion filed June 10, 1938. (R. 2092, 2094.)

3. Petition for Certiorari was filed in this Court on August 30, 1938, was granted October 17, 1938, and is No. 314, October Term, 1938.

III

STATEMENT OF THE CASE

This case originated in the State Courts. The Supreme Court of Texas fixed and determined the applicable law, and remanded it for entry of judgment in accordance therewith. Wichita Royalty Company v. City National Bank, 127 Tex. 158; 89 S. W. (2d) 394. The case now involves all that was involved in the State Courts. It now goes behind October, 1925, where it began in the original suit.

Wichita Royalty Company is a joint stock association, operating under a written and recorded Declaration of Trust, limiting the powers of the Trustee to deal only in the purchase and sale of oil and gas royalties and other oil and gas properties. (R. p. 355.)

Wichita Royalty Company, herein called the Trust, denied liability on the notes sued on in the State Courts in 1930, by the City National Bank of Wichita Falls, herein called the old Bank. The Trust filed a cross-action against the old Bank and impleaded the Bank's president, Harrell, suing for a $84,587.23 deposit balance with the old Bank, and seeking to recover its losses from the old Bank and Harrell because of their participation with one Peckham, the Trust's former Trustee, in breaches of trust. It was alleged that distinctly marked Trust funds were transferred without authority from the Trust account with the old Bank to the personal account of the drawing Trustee, whence they were distributed in part to pay the Bank the Trustee's personal debt, in part to pay the Bank's president, Harrell, that which the Trustee

personally owed him, and in part for the Trustee's personal use. A great number of the checks were payable to the order of the old Bank. Peckham, the former Trustee, died and the Substitute Trustee repudiated the former Trustee's alleged conveyances to his Trust, and tendered all properties so involved in the dual dealings by the old Trustee subsequent to October, 1925. (R. pp. 1183, et seq.)

The case was decided by the Supreme Court of Texas and remanded for a determination of the exact amount shown to be due in an accounting, liability being held to apply as a matter of law from the first time that the old Bank received a part of the Trust funds in payment of the Trustee's personal debt to it. The Court expressly held that the Substitute Trustee was within his rights in repudiating all transactions in which the former Trustee dealt with the subject matter of his Trust. The Court likewise held that limitations did not apply. It held that the tenders which the Trustee had made were good. And it held that the old Bank was liable for all funds transferred from and after its receipt of any part of the transferred funds. It likewise held that Harrell was similarly liable, receiving notice early in 1926, and being liable thereafter in all transactions in which Harrell was interested, notably in Marlborough Addition. The case was remanded to the Trial Court with instructions to apply the law thus determined. Wichita Royalty Co. v. City National Bank, 127 Tex. 158; 89 S. W. (2d) 394.

The old Bank became insolvent. (R. p. 446.) The Directors of the old Bank organized the new Bank, City National Bank in Wichita Falls, which new Bank took

over the assets and assumed the record liabilities of the old Bank. (R. p. 613.)

The Trust then amended, suing the old Bank and Harrell as before, setting up an account with its former Trustee during the entire period of his Trusteeship. It alleged that the old Bank had received transferred funds on Peckham's personal debt prior to October, 1925, as well as pleading subsequent benefits as pleaded in the State Courts. (R. pp. 33, et seq.)

In addition to its suit against the old Bank and J. T. Harrell, the Trust extended its suit to include the new Bank and the Directors of the old Bank, upon the averment that the old Bank was insolvent and its assets were taken over by the new Bank, seeking to charge the new Bank upon its assumption and as Trustee of the assets of the old, and seeking to hold the Directors of the old Bank for their action in transferring the assets of the old to the new Bank. (R. pp. 33, et seq.) The liability of the new parties, therefore, was derivate from and dependent upon liability of the old Bank.

The Federal District Court found as a fact that the old Bank had received and was liable for $2,550.00. The item should be $2,567.75, and was an overdraft dated January 11, 1926. (R. p. 582.) This was practically the beginning of the suit in the State Court. Likewise, the Court found that, "there was a direct benefit to the Bank out of the $25,000.00 loan to the Trust," in March, 1926, to such an extent that the Bank might not recover upon the note given in renewal of the loan. The Court further found benefits totaling $4,357.11 of Trust funds received by the Bank in payment of the Trustee's personal debt

to it. City National Bank v. Wichita Royalty Company, 18 Fed. Sup. 795-798. The amendment set up transactions prior to October, 1925, and the receipt of benefits by the Bank at various times, being useful as notice to the Bank of Peckham's infidelity. (R. pp. 33, et seq.) As will be detailed with record cited in the Appendix hereto attached, $4,827.71 of funds transferred from the Trust account to Peckham's account and then to Harrell's account was paid to the Bank on Harrell's debt; $5,601.48 of funds transferred from the Trust account to G. W. Peckham's personal account and therefrom paid to W. H. Peckham for a Marlborough interest was paid to the Bank upon the personal indebtedness of W. H. Peckham; and of the $15,000.00 and $25,000.00 loans which Harrell made for the bank to Peckham for the Trust, in 1926, Harrell personally received with Basham $24,611.02. Harrell, an active officer of the Bank, made each of the 1926 loans to Peckham, Trustee of the Wichita Royalty Company. (R. p. 1104.) Harrell testified that, "frequently when loans are made by the Bank of $15,000.00 or $25,000.00, the lending banker inquires the purpose for which the proceeds of the loan are going to be used." (R. p. 1295.)

Peckham had a deposit and liability account with the Bank. (R. pp. 578-610;1050-1083.) The Trust likewise had a liability and deposit account with the Bank. (R. pp. 969-1050; 884-886, 895.) During his Trusteeship, Peckham transferred $198,882.76 of the plainly marked Trust account funds to his personal account. (R. pp. 1700; 1801-1812.)

The Supreme Court of Texas in this case, citing

Steere v. Stock Yards National Bank, 113 Tex. 287; 256 S. W. 586; 258 S. W. 1042, held that:

> "Under a rule as old as the law itself, the entire deposit will be treated as Trust funds except so far as the Bank might, upon inquiry, be able to distinguish the Trust funds in said deposit from those therein belonging to Graves personally."

The Bank sought to discharge its burden to account for moneys received by Peckham from the Trust by showing book entries and/or conveyances from Peckham as an individual to himself as Trustee, all without the prior consent or subsequent knowledge of the stockholders. (R. pp. 277 et seq.)

$58,019.44 was the total of Trust checks made payable to the old Bank's order during and subsequent to March, 1926, that were reflected upon the Trust books to be in payment for one-half interest in and improvements of Marlborough addition. (R. pp. 1660, 1478, 1487-88.) Marlborough was not an oil undertaking, but a private venture which Peckham and Harrell operated, Peckham conveying the same to Texas Investment Company, where title stood at Peckham's death. (R. p. 1280.) Peckham executed a deed and handed it to the Trust's bookkeeper with a letter stating that Harrell was unwilling to be associated with the stock company, but was willing to be a partner with Peckham as an individual. (R. p. 785.) Peckham told the bookkeeper to let no one see the deed. (R. pp. 693, 739.) It was never recorded. (R. pp. 693, 733, 736-37.) The Supreme Court of Texas held that Marlborough was not a proper account for the Trustee's use of said Trust funds, and that the Substitute Trustee's

tender was good. Wichita Royalty Co. v. City National Bank, 127 Tex. 158; 89 S. W. (2d) 394.

$15,250.00 was to apply, but did not apply, upon the Trust's note payable to the bank. (R. p. 807.)

$19,828.67 was wholly unaccounted for. (R. p. 807.)

$15,140.78 was the amount of Trust funds transferred which the Bank defended by showing certain royalty interests which Peckham was supposed to have conveyed to himself as Trustee, and which the Substitute Trustee repudiated and tendered in the State Court, which repudiations and tenders the Supreme Court of Texas held good. Wichita Royalty Co. v. City National Bank, 127 Tex. 158; 93 S. W. (2d) 394. The $15,140.78 total is made up as follows: $5,000.00, defended against by the Bank by book entries in the Trust records showing the Trust's acquisition of the Anderson royalty with an affirmative showing that neither Peckham nor the Trust ever had title to the interests; $3,000.00, defended against by the Bank by book entries in the Trust records showing the Trust's acquisition of Polk royalty with an affirmative showing that neither Peckham nor the Trust ever had title to the interest; $1,920.00 was defended against by showing that the deed to the Hartley royalty with draft attached on Peckham was paid by the Bank on Trust check payable to the Bank's order; $160.00 was defended against by the Bank's showing Peckham's sale to the Trust of an Ellis County lease shown to have terminated before this suit arose; $2,500.00 was defended against by the Bank by the showing of Peckham's conveyance to the Trust of the Callahan Royalty. From these properties the Trust received no income. $2,560.78 was de-

fended against by the Bank by book entries showing the Trust's ownership of Porter Ranch, which stood in the name of Peckham, Harrell and others, was never conveyed to the Trust, with the Trust receiving $227.48 revenue therefrom before the State Court suit, in which the item was repudiated with tenders made. (R. pp. 1670-1675.) This $15,140.78 was involved in the suit in the State court with repudiations and tenders made, and the Supreme Court of Texas held the repudiations and tenders valid. Wichita Royalty Co. v. City National Bank, 127 Tex. 158; 89 S. W. (2d) 394.

The $58,019.44 Marlborough checks, $15,250.00 note checks, the $15,140.78 royalty checks, and the $19,828.67 that was unaccounted for represent the Trust's losses that were involved in the State Court prior to a decision by the Supreme Court of Texas. The difference between $198,882.76 that was transferred from the plainly marked Trust account to the personal account of Peckham, and $108,238.89 that was involved in the case at the time of its decision by the Supreme Court of Texas is the amount which the Trust amended to include after the decision of the Supreme Court of Texas, including $31,500.00 for salary after the Trustee began his peculations.

The royalty interests which Peckham caused Trust books to show were transferred to the Trust were not shown by the books to come from or through Peckham. (R. pp. 719-730.) Some of these royalties were never conveyed to the Trust. (R. pp. 725-788.) The stockholders were never advised of Peckham's personal interest in any transaction. (R. p. 791.) Appropriate tenders were made by the Trust, and an accounting sought. (R. pp. 191-231.)

The Supreme Court of Texas held that such was not a proper account for the use of Trust funds, and that the tenders were proper. Wichita Royalty Co. v. City National Bank, 127 Tex. 158; 89 S. W. (2d) 394.

The Circuit Court of Appeals for the Fifth Circuit remanded the case because of the Trial Court's failure to find facts. Wichita Royalty Co. v. City National Bank, 95 Fed. (2d) 671. In remanding the case the Court expressly decided the law to be different from the law as decided by the Supreme Court of Texas, its holding being: "We proceed to set forth our views especially on points not in harmony with those expressed by the Supreme Court of Texas." Wichita Royalty Co. v. City National Bank, 95 Fed. (2d) 671, 675.

The Circuit Court held the old Bank and Harrell not to be liable as a matter of law from and after the first benefit, being in direct conflict with the holding of the Supreme Court of Texas in the same case. It likewise held that the purchases by the Truustee from himself were not void but voidable, that the Bank could not question them, and that "only knowledge of a most barefaced fraud would have justified the bank in refusing to honor a check drawn to Peckham in payment of such property," whereas, the Supreme Court of Texas held the Bank to be liable for all transfers after the first benefit and that it was not a defense for the Bank to show the sale of properties from Peckham to his Trust which the Substitute Trustee had repudiated and tendered. The Circuit Court of Appeals further held that the Marlborough transaction, though not within the scope of the powers entrusted to the Trustee, might under extreme circumstances be held to be binding upon the Trust, if the Sub-

stitute Trustee accepted a valid title to minimize his loss, whereas, the Supreme Court of Texas had expressly held the Marlborough transactions not to be binding upon the Trust and the Substitute Trustee's repudiation and tender thereof to be proper. The Circuit Court reserved the right to pass upon the question of limitation, while the Supreme Court of Texas expressly held that limitation did not apply. Wichita Royalty Co. v. City National Bank, 95 Fed. (2d) 671; 127 Tex. 158; 89 S. W. (2d) 394.

After the First Motion for Rehearing was filed this Court decided *Erie Ry. Co. v. Tompkins*, 82 Law Ed. Adv. Ops. 787; *Ruhlin v. New York Life Ins. Co.*, 82 Law Ed. Adv. Ops. 823, and kindred cases. The Trust then filed a Second Motion for Rehearing asking the Court to modify its opinion by declaring the law as pronounced by the Supreme Court of Texas in this same case to be the law of the case. (R. pp. 2087, et seq.) The Second Motion was carefully considered by the Circuit Court of Appeals and overruled. (R. pp. 2092, et seq.) 97 Fed. (2d) 249. Seasonably and in proper time and manner the Trust applied for and was granted a Writ of Certiorari.

IV

SPECIFICATION OF ERRORS

1. The Circuit Court of Appeals erred in holding that it was not required to follow and apply the State law as announced by the highest Court of Texas in this case.

2. The Circuit Court of Appeals erred in holding that despite the determination by the Supreme Court of Texas of the law to be applied in this case, the Circuit Court of

Appeals was free to declare the State law by inference from a State decision rendered contemporaneously with the decision of the State Court in the case at bar and involving different facts and legal principles.

V

SUMMARY OF ARGUMENT

1. The Circuit Court of Appeals was bound by the law of the case as promulgated by the State Supreme Court prior to removal.

2. The governing State law, binding upon the Circuit Court of Appeals, is set forth by the State Court in its decision of this case, without variance by any other State decision.

VI

ARGUMENT

1. The Circuit Court of Appeals was bound by the law of the case as promulgated by the State Supreme Court prior to removal.

Petitioners do not complain at the Circuit Court's reversal of the judgment for failure of the District Court to find the facts specially. This Court has required a strict adherence to Equity Rule 70½. *Inter State Circuit, Inc., Texas Consolidated Theatres, Inc., Karl Hoblitzelle, et al v. United States of America*, 82 Law Ed. Adv. Ops. 772.

The Circuit Court of Appeals quite properly coupled the remand for fact findings with a pronouncement of the law by which the District Court should be governed. Petitioners' complaint arises from the Court's departure

from the State Court's decision to lay down with finality rules not in harmony therewith.

In their contention that the removal of this cause carried with it as the "law of the case" the decision of the Supreme Court of Texas, Petitioners rely on *Williams v. Conger*, 125 U. S. 397. As here, that case was instituted in a District Court of Texas and appealed to the Supreme Court of Texas where it was reversed and remanded for another trial, with the holding that a power of attorney offered by one of the parties was admissible as an ancient instrument. Thereafter the case was removed to the Circuit Court for the Northern District of Texas. On appeal, this Honorable Court decided that the power of attorney was properly admitted and that in any event this Court was bound by what had been decided on the question by the Supreme Court of Texas. The following is from the opinion of Mr. Justice Bradley:

> "But there is another reason why it is proper that we should so hold. The case was once before the Supreme Court of Texas on an appeal taken to set aside the verdict rendered on a former trial; and that Court held, under the same evidence used at the trial in the Circuit Court, that the document was admissible in evidence as an ancient one. If the action had originally been brought in the Circuit Court upon proper jurisdictional grounds, and had been tried as it was in the State Court, and if, on a Writ of Error from this Court we had decided as the Supreme Court of Texas did,—we should have felt bound by our first decision. We would not have allowed it to be questioned. Clark v. Keith, 106 U. S. 464 (27:302). The present case is in exactly the same category. The removal of the cause from the State Court does not

put us in the position of a Court of review over the Supreme Court of Texas. When it acted, it was the highest Court that could act in the cause, and stood in precisely the same position that we stand now. Its action must be accepted by us as that of a Court having plenary and final jurisdiction."

The Circuit Court of Appeals sought to distinguish the Conger decision on the ground of its being a land case in which the State decisions had peculiar weight and because the particular State Court's decision was but used to support this Court's ruling on the question. The quoted language is too definite and unqualified to admit of such limited import.

It is argued by the Circuit Court of Appeals that because the Texas Supreme Court was competent to reverse its decision and redeclare the governing law, its successor Appellate tribunal might exercise the same prerogative. That argument can not stand against this Court's authoritative commitment to the proposition that the removal of the cause does not put the Federal Appellate Court in the position of a Court of review over the Supreme Court of Texas. Any supposition that the Texas Court might shift its position on the questions involved would not be compatible with the exhaustive consideration given the case, both on original hearing and on rehearing. Wichita Royalty Co. v. City National Bank of Wichita Falls, et al, 127 Tex. 158; 89 S. W. (2d) 394; on rehearing, 127 Tex. 158; 93 S. W. (2d) 143. The finality of the decision is emphasized in the approval given it by the same Court in the contemporaneous case of *Quanah A. & P. Ry. Co. v. Wichita State Bank and Trust Co.*, 127 Tex. 407; 93 S. W. (2d) 701, p. 709.

In rejecting the "law of the case," the Circuit Court of Appeals assumes the power to "correct what may be clearly wrong." (R. p. 2074.) Even if it be granted that the "law of the case" does not completely bar a re-examination of the questions decided, it must be evident that the Circuit Court of Appeals wholly failed to give to the State Court's decision "the great consideration always due the decision of the highest Court of the State where the litigation arose, and always accorded to the decisions of that eminent Court." (R. p. 2074.) The obviously careful and extensive deliberation devoted to the case by the Supreme Court of Texas, and the division in the authorities recognized by both that Court and the Circuit Court of Appeals, must surely preserve the State Court's decision from the fate of being pronounced "clearly wrong." *Waialua Agr. Co., Ltd. v. Christian*, 83 Law Ed. Adv. Ops. 42. Yet the Circuit Court of Appeals in effect reached that result and thereby undid in large measure what had been accomplished by some four years of litigation in the Courts of Texas.

2. The governing State law, binding upon the Circuit Court of Appeals, is set forth by the State Court in its decision of this case, without variance by any other State decision.

Even if it is conceded that the "law of the case" expresses a rule of practice, (*Messinger v. Anderson*, 225 U. S. 436) permitting the extraordinary action of the Circuit Court of Appeals, that Court's refusal to follow the opinion of the State Supreme Court can not be reconciled with the recent decisions of this Court in *Erie Ry. Co. v. Tompkins*, 82 Law Ed. Adv. Ops. 787, and *Ruhlin*,

et al v. New York Life Ins. Co., 82 Law Ed. Adv. Ops. 823. The original opinion of the Circuit Court of Appeals treats the opinion by the Supreme Court of Texas as representing the applicable State law, but fails to accept its guidance. Petitioners' Second Motion for Rehearing invoked the rule of *Erie Ry. Co. v. Tompkins, supra*, (R. p. 2091.) This Court decided that case after the Circuit Court's original opinion had been handed down and just prior to the filing of the Second Motion for Rehearing.

Faced with this situation, the Circuit Court of Appeals professed on rehearing to follow the law of Texas, not as expressed by the Supreme Court of Texas in this case, but as the Supreme Court of Texas might conceivably express it if another opportunity were given it. This anomalous view is grounded on the conclusion that the Texas Court has "since done" that which is in effect contrary to its decision in this case. (R. p. 2093.) 97 Fed. (2d) 249, at p. 250. The Texas Court's disposition of *Quanah A. & P. Ry. Co. v. Wichita State Bank and Trust Company, supra*, is treated as later in time and controlling of the question involved.

The mistake as to the priority in time of the decision in the case at bar is manifest from the original opinion of the Circuit Court of Appeals, where a particular point is made of the fact that *Quanah A. & P. Ry. Co.* case was argued and decided with the present case. Wichita Royalty Co. v. City National Bank of Wichita Falls, 95 Fed. (2d) 675, Footnote 2. While the original opinion of the *Quanah A. & P. Ry. Co.* case was withdrawn and a different result reached, the final opinion was delivered on the same day that the opinion on rehearing was delivered in

this case. 127 Tex. 158; 93 S. W. (2d) 143; 127 Tex. 407; 93 S. W. (2d) 701. From the fact that the two decisions were contemporaneous, it must inescapably follow that both were designed to retain their full force and effect.

There is no conflict between the two cases and none can be inferred. The present case involved a direct participation by the old Bank, the City National Bank of Wichita Falls, in Trustee Peckham's wrongful handling of funds. The District Court, while making no formal fact findings on many matters involved, did find that the Bank received a payment of $4,357.11 on the Trustee's personal indebtedness from Trust funds transferred to the personal account of the Trustee. (R. p. 1928.) 18 Fed. Sup. 798. As shown above, the Bank received other benefits. The item of $2,550.00 found to have been so paid to the Bank, was received on January 11, 1926. (R. p. 582.) The evidence clearly sustains this finding. (R. p. 582.) The Marlborough transaction, involving more than $58,-000.00, and the other transfers and disbursements complained of in the suit as originally instituted, and carried forward on removal to the Federal Court, took place after January 11, 1926. The Supreme Court of Texas bottomed the liability of the Bank on the constructive notice visited upon it by these payments. It could not thereafter assume that the Trustee would properly use and account for other Trust funds commingled with his own in the personal account. Hence, the Bank, having notice of the wrongful application of the Trust money to the Trustee's personal indebtedness, was required thereafter to supervise the account for the purpose of preventing a subsequent misuse of Trust moneys irregularly transferred to the personal account. Failing in that duty, the Bank was liable for

the aggregate amount of Trust funds thereafter withdrawn and applied to unauthorized purposes. Included in such unauthorized purposes was the investment in Marlborough Addition, a suburban real estate venture, wholly unconnected with the business of the Trust.

The respondent Harrell's liability was also made to proceed from the knowledge he gained through his receipt of Trust money from the commingled account in January and February, 1926, in payment of the Trustee's personal obligations to Harrell and others. Thenceforward, he had constructive notice of Peckham's misapplication of funds in those transactions wherein Peckham and Harrell were jointly cooncerned. 127 Tex. 158; 89 S. W. (2d) 394, 407. Furthermore, Harrell likewise received the benefit of Marlborough checks and is liable therefor. *Hill v. Wiley*, 3 N. E. (2d) 1015, 1018, holding:

> "It is established law in this commonwealth 'that where a trustee of several estates steals money from one, with which to pay the debts of another, the latter, having been unjustly enriched at the expense of the former, may be required in equity to make restitution.' Bremer v. Williams, 210 Mass. 256, 257, 96 N. E. 687, 688; Newell v. Hadley, 206 Mass. 335, 92 N. E. 507, 29 L. R. A. (ns) 908; Fitcher v. Griffiths, 216 Mass. 174, 103 N. E. 471; Ricker v. Ricker, 248 Mass. 549, 143 N. E. 539."

The Texas Court further held that the succeeding Trustee was within his rights in repudiating all transactions wherein the defaulting Trustee personally sold property to his Trust and that moneys thus withdrawn from the commingled account would not be credited against the Bank's liability. The Court held that the unauthorized

acts of the succeeding Trustee, unknown to the stockholders, could not constitute a ratification and that the Statute of Limitation was not effectual to bar recovery.

A comparison of these holdings with the single proposition laid down in the case of *Quanah A. & P. Ry. Co. v. Wichita State Bank & Trust Co., supra*, conclusively demonstrates that the one case did not encroach in any degree upon the other. In the *Quanah A. & P. Ry. Co.* case there was but one account in the Bank, the individual account of the offending corporate officer. From time to time he tendered bills of exchange payable to himself (Hawkins) as Treasurer of the Quanah A. & P. Ry. Co., endorsed by him in such capacity, and credited by the Bank directly to his personal account. There was never any payment to the Bank, none of the checks were payable to the Bank, no transfers from a fiduciary account to a personal account in the same bank were involved, and the Bank had no knowledge that the Trust funds were being misused.

In at least three places, the Supreme Court of Texas emphasizes the fact that the Wichita State Bank & Trust Company received none of the fund and took no part in its spoliation. It notes that the petition desclosed no such case. 127 Tex. 407; 93 S. W. (2d) 705. It distinguishes *United States Fidelity & Guaranty Company v. Adoue & Lobit*, 104 Tex. 379; 137 S. W. 648; 138 S. W. 383, a Texas decision relied upon by Judge Taylor in the Royalty Company opinion, on the ground that the *Adoue & Lobit* case involved a payment of part of the funds to the Bank. In stating the precise question to be decided, in the *Quanah A. & P. Ry. Co.* case, the Court says:

"From the above, it is evident that we must an-

swer the following question in order to decide the case:

"If a person negotiates to a bank a bill of exchange payable on its face to the person negotiating it in a Trust capacity, and the purchasing bank, in the very transaction by which it acquires the instrument, passes its proceeds to the individual checking credit of the Trustee on its books, and thereafter allows him to check out such proceeds on his individual checks, and as a result of such transactions the fund is lost to the true owner, is the bank liable for such loss to such true owner?

"The question involves a case where the bank received no part of the funds, and had no actual knowledge that the funds were being checked to persons not entitled to receive them. Also, a case is involved where the bank made no inquiry." (Italics added.)

Justice Critz expresses for the Supreme Court complete satisfaction with its contemporaneous decision in the present case. His language is here quoted:

"We are satisfied with our opinion in the Wichita Royalty Company case as explained by our opinion on rehearing in that case."

The opinion on rehearing in this case reaffirms all principles of law laid down in the original opinion:

"The principal aim of the original opinion is to set forth the principles of law applicable upon another trial." Wichita Royalty Co. v. City National Bank, 127 Tex. 158; 93 S. W. (2d) 143.

The Court wrote another opinion on rehearing, simply to indicate that it had settled the applicable law

without attempting to resolve fact questions appearing on another trial. 127 Tex. 158; 93 S. W. (2d) 143, 144. Hence, the Supreme Court of Texas did what the Circuit Court of Appeals has done in laying down rules of law to govern the facts to be found by the trial Court.

The difference between the two Courts on material legal issues is, in the main, fourfold:

1. The Texas Court's rule of constructive notice after receipt of payment is rejected by the Circuit Court, and in its stead actual knowledge of each wrongful transaction measures the liability.

2. Harrell's liability is limited to funds received with notice and diversions in which he knowingly assisted, whereas the Supreme Court of Texas applied to Harrell the same rule of constructive notice as that applied to the Bank.

3. The Circuit Court held that the Marlborough transaction was unauthorized, but that it might be sustained if the succeeding Trustee accepted a valid title in an effort to save a doubtful obligation of Peckham's estate; whereas, the rule promulgated by the Supreme Court of Texas recognized no circumstance under which the Trust would be bound by this transaction.

4. The Circuit Court held that Peckham's sale as an individual to himself as Trustee was an account of Trust moneys used therefor, because the bank was not a party to these transactions; whereas, the Supreme Court of Texas held that such dual dealings of the Trustee were voidable at the election of his successor, and that the Bank's duty to supervise the commingled account was not

relaxed by reason of its not being a party to these transactions.

The question of limitation, decided in favor of the Trust by the Supreme Court of Texas, is left open by the Circuit Court of Appeals. Other questions ruled by the Supreme Court of Texas, but not expressly passed upon by the Circuit Court of Appeals, were likewise left open.

The Circuit Court of Appeals is right in holding that the Bank was liable for the payments received by it on Peckham's personal indebtedness. It likewise is right in its holding that the Bank is liable for the amounts represented by checks on their face payable to the Bank and credited to the personal account of Peckham. These checks aggregate more than $75,000.00 and primarily concern the Marlborough transaction. The Supreme Court of Texas did not consider this question since its rule of constructive notice would include liability on these items, irrespective of their distinctive character.

Apart from notice given the Bank by participation in the fund, recovery on the checks payable to its order is obviously justified on the reasoning advanced by the Circuit Court. The very form of the checks required that the Bank refuse to pass them to the individual account of the Trustee. *Robbins v. Passaic National Bank*, (N. J. Court of Appeals and Errors) 109 N. J. L. 250, 82 A. L. R. 1368.

The opinion of the Supreme Court of Texas in this case embodies the controlling State law applicable still and controlling the decision in the Federal Courts. In substantial respects, the Circuit Court of Appeals has differed with that decision. The two decisions are hopelessly

irreconcilable. The Circuit Court of Appeals recognized that it was differing from the Supreme Court of Texas upon original hearing. 95 Fed. (2d) 671, 675. After *Erie Ry. Co. v. Tompkins, supra,* and petitioners' asking leave to file and filing a Second Motion for Rehearing, which the Court considered, the Circuit Court professed to follow the Texas law, but based its holding upon the inadequate foundation of a plainly distinguishable State decision contemporaneously rendered.

If the doctrine of *Erie Ry. Co. v. Tompkins, supra,* and *Ruhlin v. New York Life Ins. Co., supra,* is to have any stability and consistency of application, the Federal Courts will not be left free to determine the applicable State law by resort to pure speculation on the future trend of that law. If an established precedent can be so easily displaced, it may as well be said that the Federal Courts will determine the State law in the first instance.

Wherefore, prayer is made that the judgment of the Circuit Court of Appeals for the Fifth Circuit be reversed, and that the law as decided by the Supreme Court of Texas in this case be applied, and for general and special relief.

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APPENDIX

Peckham for the trust borrowed $15,000.00 from the Bank to pay Harrell and one Basham for Stephens Royalty. (R. pp. 885; 481.) He borrowed $25,000.00 to put his trust behind the Marlborough venture. (R. pp. 1104-1105; 885.) Harrell and Peckham negotiated both loans in 1926, in renewal of which, suit was filed. (R. p. 1104.) The Trial Court correctly held that details of these transactions voided the notes sued on. (R. pp. 1922-1930.) He did not find the details. (R. pp. 1922-1930.) They are without dispute;

On January 1, 1926, Harrell and Peckham were good friends. (R. p. 449.) The former was chief executive officer of the Bank and the latter was trustee of Wichita Royalty Company. (R. p. 420.) They owned Marlborough Addition. (R. p. 1275.) They had acquired or were acquiring the Curlee tract. (R. p. 1267.) Prior thereto Peckham had acquired a one-half interest in Stephens royalty, executing notes for the deferred consideration. (R. pp. 1266-1267; 449.)

Harrell pleaded in four places that he and Basham sold Stephens royalty to Wichita Royalty Company. (R. pp. 262-276.) Likewise he testified that he sold it to Wichita Royalty Company. (R. pp. 1268; 1279.) The deed is dated January 1, 1926, and names Wichita Royalty Company as its grantee. (R. pp. 450-451.)

On January 4, 1926, Peckham transferred $5,000.00 from the trust account to his personal account. (R. pp. 480; 1715; 1019; 1051.) Peckham's checks exhausted his private funds on the seventh, leaving the commingled account consisting wholly of transferred funds. (R. p.

1051.) It so remained until January 11, 1926 (R. p. 1051). That day Peckham transferred another $5,000.00 from the trust account to his personal account. (R. pp. 1715; 480.) Meanwhile on January 8, 1926, G. W. Peckham and J. T. Harrell each had issued their respective checks for $2,567.75 in payment for their joint purchase of the Curlee land, $4,749.10 being deposited to the account of W. S. Curlee on January 8, 1926, and $381.40 being deposited to the account of Welch, Richardson and Kemp, brokers in the deal, on January 8, 1926. (R. pp. 481; 1268; 1798; 1799.)

Peckham's $2,567.75 check paid on the eighth, created an overdraft and it remained an overdraft until it was taken up on January 11, 1926, by the transfer of the second $5,000.00 above. (R. p. 582.)

Peckham's check for $2,567.75 was for part of the joint purchase with Harrell of the Curlee land, Peckham's interest in which land being taken in by Harrell and Basham as a part of the consideration for their sale to Wichita Royalty Company at $1,000.00 more than Peckham paid for it. (R. pp. 1293-1294-1295.) Harrell testified that he and Basham took Peckham's interest in for a known profit to Peckham of $1,000.00. (R. pp. 1293-1294-1295.) Harrell not only knew that in the sale to Wichita Royalty Company Peckham was paying a part of the consideration by a conveyance to Harrell and Basham of property personally owned by Peckham, but also that he was putting it in at a known $1,000.00 profit. (R. pp. 1293-1294-1295.)

The next day, January 12, 1926, at a time when Peckham's commingled account consisted wholly of transferred funds, he paid $454.50 as a part of the joint ac-

count with Harrell and others of the Marborough property. (R. pp. 1539; 1654; 582; 1715.)

Four days later, January 16, 1926, Peckham, trustee, executed a note for $15,000.00. (R. p. 1539.) On the same day Peckham issued his check upon the commingled account for $2,201.32 as the first payment to Harrell and Basham of their sale to Wichita Royalty Company. (R. pp. 1539; 1716.) Of the $2,201.32 so paid Harrell and Basham out of the commingled account, $1,362.87 consisted wholly of funds theretofore transferred from the trust account. (R. pp. 1539; 1716.)

Harrell testified that he had asked customers of the bank when they would make an application for loan what they intended to do with the money. "I never asked George Peckham that that I recall. *I might have.* I don't know whether he would have told me or not. Mr. Peckham never refused to answer any question that I asked him about his business. I might have asked him some questions about his business." (R. p. 450.) He further testified that "frequently when loans are made by the bank of $15,000.00 or $25,000.00, the lending banker inquires the purpose for which the proceeds of the loan are going to be used." (R. p. 1295.)

The second day thereafter, January 18, 1926, Wichita Royalty Company received credit for the proceeds of the $15,000.00 loan made January 16, 1926, against which and on January 18, 1926, Peckham transferred to his personal account $15,769.07. (R. pp. 1539; 1716; 582; 482.) His January eighteenth commingled balance of $18,765.87 was constituted wholly of funds theretofore transferred. (R. p. 1716.)

Thereafter and before another deposit to his personal account and at a time when the commingled account consisted wholly of transferred funds, G. W. Peckham on January 25, 1926, issued his check to J. T. Harrell and C. E. Basham for $10,028.00 which check that day was charged against Peckham's commingled account, $5,014.00 being deposited to the respective accounts of Harrell and Basham in the bank. (R. pp. 1539; 1716; 582.) The $5,014.00 so deposited to the personal account of J. T. Harrell was at a time when on January 25th, his personal balance was $219.16 and his personal liability to the bank was $15,574.44. (R. pp. 1539; 582.) That day and with $4,827.71 of the funds transferred from the trust account to Peckham's account, and then to Harrell's account (J. T. Harrell being the banker who negotiated the January 16th loan from which the proceeds were derived), Harrell paid the bank his private debt of $5,006.67, leaving his personal balance at the close of business January 25, 1926, $186.29. (R. pp. 1539; 482; 1090; 1085.) The banker who negotiated the $15,000.00 received $5,014.00 thereof upon its being transferred to Peckham's commingled account, and such banker paid the bank his private debt with $4,827.71 of the proceeds of the $15,000.00 loan. (R. pp. 482; 1539; 1540.)

A week later and on February 2, 1926, G. W. Peckham caused trust check 465 for $400.00 to be issued and deposited to his personal account. (R. pp. 484; 1540.) That same day G. W. Peckham drew his personal check against the commingled account for $5,100.00 payable to the order of J. T. Harrell and C. E. Basham which such bankers cashed and which check was charged against the commingled account at a time when it required $3,074.15

of the moneys theretofore transferred from the Royalty account to Peckham's personal account to pay the $5,100.00 check. (R. pp. 1716; 484.) On February 13, 1926, G. W. Peckham paid the respondent bank $550.00 from his commingled account upon his private debt. (R. pp. 485; 1540; 1716.)

On March 1, 1926, G. W. Peckham owed the respondent bank $28,050.00 with interest. (R. pp. 1082; 1104; 1540; 486.) His beginning balance that day was $341.90. (R. pp. 486; 1105; 1540.) J. T. Harrell then owed the Bank $7,060.00. (R. pp. 486; 1085; 1540.) G. W. Peckham and J. T. Harrell were still jointly obligated upon the Marlborough indebtedness in excess of $50,000.00. (R. pp. 1540; 486.) W. H. Peckham then owed the Bank $6,120.00 and was jointly liable with J. T. Harrell and G. W. Peckham upon the Marlborough indebtedness. (R. pp. 1105; 1098; 1540.)

On March 1, 1926, the plat and dedication of Marlborough Addition had not been filed for record. (R. p. 1287.) The land had been acquired for the purpose of its development as a suburban addition. (R. p. 1275.) It had no actual or prospective value as oil property. At that time the partners were faced with the necessity of expending large sums of money and incurring large items of expense in paving, laying sewer lines, and in other ways developing the property. (R. p. 476.)

G. W. Peckham was greatly involved. (R. pp. 486; 1104.) He had consistently owed the respondent Bank large sums of money for a long period of time. (R. pp. 1080-1081-1082-1083.) Wichita Royalty Company had large holdings of valuable properties, a substantial monthly income, and except for the $15,000.00 item above

described, owed no debts other than current items. W. H. Peckham was indebted to the Bank and so was J. T. Harrell. (R. pp. 486; 1540.) They were three of the Marlborough partners. They had theretofore expended $4,567.93, each as their respective costs to the date for expenses incident to the purchase and development of Marlborough Addition. (R. pp. 448; 1104.) Large sums were needed to develop the partnership venture. (R. p. 1276.) A loan was needed. Very frequently Bankers inquire the purpose of a loan. (R. p. 1295.) He "might have" asked Peckham what he wanted to do with the funds. (R. p. 450). Peckham and Harrell concluded negotiations for a $25,000.00 loan, G. W. Peckham, trustee, becoming the joint maker with himself individually upon a $25,000.00 note to the bank and $25,000.00 being deposited to the credit of the trust. (R. pp. 885; 1104; 1540.) G. W. Peckham was the joint maker of the note, which note was original of the present $22,000.00 note. (R. p. 1308.)

The same day that the loan was made, G. W. Peckham issued his check on the commingled account payable to W. H. Peckham for $11,811.85 for W. H. Peckham's sale to G. W. Peckham of W. H. Peckham's one-fourth interest in the Marlborough venture. (R. pp. 583; 1104; 1105; 1541.) G. W. Peckham's personal balance of $341.90 was insufficient to pay W. H. Peckham's checks until March 9, 1926, on which day G. W. Peckham's personal balance of $225.20 consisting wholly of transferred funds was increased $17,623.70 upon trust check No. 478 drawn on and payable to the bank's order and deposited to the drawing trustee's personal account, the trustee causing trust records to show the purpose of the check to be Wichita Roy-

alty Company's acquiring a one-half interest in the Marlborough partnership property. (R. pp. 583; 1105; 1541; 1729.)

The same day G. W. Peckham drew his check against the commingled account consisting wholly of transferred funds for $5.060.00 payable to the order of J. T. Harrell and Basham, which was paid to such bankers, one of whom had loaned G. W. Peckham, trustee, the $25,000.00, from which account the $17,623.70 was transferred to G. W. Peckham's commingled account to make it sufficient to pay the check which Peckham issued to Harrell and Basham. (R. pp. 1105;-1541; 1729.) Very frequently bankers inquire the purpose of a loan. (R. p. 1295.) He "might have" asked Peckham what he wanted to do with the funds. (R. p. 450.) Peckham and Harrell concluded negotiations for a $25,000.00 loan, G. W. Peckham becoming the joint maker with himself individually upon a $25,000.00 note to the bank and $25,000.00 being deposited to the credit of the trust. (R. pp. 885; 1104; 1540;.) G. W. Peckham was the joint maker of the note, which note was the origin of the present $22,000.00 note. (R. p. 1308.)

On March 9, 1926, W. H. Peckham's $11,811.85 check cleared against the commingled account and same was added to his then deposit balance of $518.52. (P. pp. 1096; 1105; 1729; 1541.) On the same day W. H. Peckham paid the bank his personal indebtedness of $6,120.00, being a payment to the bank of $5,601.48 of the proceeds of the $25,000.00 loan first deposited to the Wichita Royalty Company account, then transferred to G. W. Peckham's account, then transferred to W. H. Peckham's account, and therefrom paid to the bank which loaned the $25,000.00. (R. pp. 1098; 1104-1105; 1541.)

Thereafter on March 31, 1926, G. W. Peckham from his commingled account paid to Harrell and Basham $5,087.00. (R. pp. 1729; 1106.)

The beginning balance of G. W. Peckham on March 31, 1926, was $503.98 which was constituted wholly of trust funds theretofore transferred to the commingled account on March 6, 1926. (R. pp. 1729; 1106; 584.)

To this beginning balance of $503.98 and on March 31, 1926, Peckham caused trust check No. 485 for $7,500.00 to issue, drawn on and payable to the order of the respoondent bank, and which the respondent bank permitted to be deposited to the personal account of G. W. Peckham from which transferred funds, G. W. Peckham paid to J. T. Harrell and C. E. Basham $5,087.00, said payments to said banker being constituted wholly of trust funds theretofore transferred to the trust account. (R. pp. 1729; 1106; 584.)

Up to March 1, 1926, W. H. Peckham and G. W. Peckham jointly had been out on Marlborough Addition $9,047.50. (R. pp. 1542; 1104.) G. W. Peckham had been out $4,523.75. The witness, Lambert, did not know whether Harrell asked Peckham why he wanted to borrow these moneys in 1926. (R. p. 1542.) "Occasionally Bankers ask applicants for loan what they expect to do with the proceeds," Lambert testified. (R. p. 1542.) Harrell testified that very frequently inquiry would be made and that he might have asked Peckham what he intended to do with the proceeds of the loan. (R. p. 1295.) Occasionally Peckham advised with Harrell with reference to his financial affairs. (R. p. 450.)

On April 10, 1926, G. W. Peckham executed the Marl-

borough deed purporting to convey to his trust one-half interest in Marlborough Addition. The deed bears no revenue stamps. It was never recorded. (R. pp. 693, 733, 736-737.) Harrell knew of Bill Peckham's sale about the time he sold. (R. p. 1287.) The deed was handed to the bookkeeper of the trust with instructions not to let anyone see it. (R. pp. 698, 739.) It was delivered with a letter. (R. pp. 785-786.) The letter recites that one-half interest "is held in my name because of the *fact* that the other owners would not care to be associated with a stock company but *are willing* to be partners with *me as an individual*." (R. pp. 785-786.) Italics added.

The stockholders of the trust were never advised of the existence of the deed or of the trust's supposed interest in Marlborough venture. (R. pp. 685, 739, 745.) Peckham dealt with the interest as his own. At the time of Peckham's death, good title stood in the name of Texas Investment Company. (R. p. 1280.)

Check No. 487 for $17,623.70, No. 485 for $7,500.00, No. 503 for $3,000.00, No. 507, for $1,500.00, No. 510 for $4,500.00, No. 519 for $1,000.00, No. 525 for $4,000.00, No. 432 for $4,357.58, No. 516a for $538.16, No. 571 for $2,000.00, and No. 579 for $2,500.00, total $58,019.44, which checks were payable to the order of the bank, were transferred to and deposited in the personal account of G. W. Peckham with the bank and by him misappropriated, the trust books causing items to be entered as in payment of Marlborough Addition. (R. p. 1542.)

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NO. 314

IN THE

Supreme Court of the United States

OCTOBER TERM, 1938

WICHITA ROYALTY COMPANY ET AL, *Petitioners*

versus

CITY NATIONAL BANK OF WICHITA FALLS ET AL,
Respondents.

On Petition for a Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.

BRIEF FOR THE RESPONDENT IN OPPOSITION

TARLTON MORROW,
T. R. BOONE,
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BAILEY—WICHITA FALLS

INDEX

	Page
Jurisdiction	1
Question Presented	1- 2
Statutes and Authorities	2
Statement and Argument	2- 8
Appendix	9-10

CITATIONS

Cases:

Coleman v. First National Bank, 94 Texas 607 8

Gray v. Johnson, L. R., 3 Eng. & Ir. App. case., 1 8

Interstate National Bank v. Claxton, 97 Texas 569 ... 8

Joske v. Irvine, 91 Texas 574 2

Lauchheimer & Sons v. Coop, 86 S. W. 57 3

Quanah, Acme & Pacific Railway Co. v. Wichita State Bank & Trust Co., 127 Texas 407, 89 S. W. (2d) 385 ..... 4, 5, 6

Steere v. Stockyards National Bank, 113 Texas 387 .. 7

U. S. Fid. & Guar. Co. v. Adoue & Lobit, 104 Texas 383 8

Wheeler Motor Sales Co. v. Guerguin, 16 S. W. (2d) 309 8

Williams v. Safety Casualty Co., 102 S. W. (2d) 178 . 10

Statutes:

Texas Civil Statutes, Article 1 9

Texas Civil Statutes, Article 1771 9-10

Texas Civil Statutes, Article 2211 9

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JURISDICTION

The opinion of the Circuit Court of Appeals was entered March 23, 1938. (R. 2069.) A petition for rehearing was denied April 18, 1938. (R. 2085.) A second hearing was filed May 23, 1938. (R. 2089.) The opinion on the second motion for rehearing was entered June 10, 1938. (R. 2092.)

QUESTION PRESENTED

The sole question presented is whether or not the

opinions of the Circuit Court of Appeals, in respect to the liability of banks in the handling of fiduciary deposits, conflicts with the general law of Texas as announced by its highest courts.

STATUTES AND AUTHORITIES

The pertinent statutes will be found in the Appendix, pp. 9, 10.

STATEMENT AND ARGUMENT

The point made by the petitioners is that the Circuit Court of Appeals did not follow the *reasoning* of the Texas Supreme Court on a former appeal of this case. In considering the effect of the statements of the Supreme Court in remanding this case, its opinion, both on original hearing and on motion for rehearing, must be considered in the light of the Texas practice. The appeal to the State Supreme Court was from an instructed verdict upon a cause of action wherein it was charged that the bank had knowingly received deposits belonging to the fiduciary in satisfaction of its own debt, and had knowingly aided the trustee in the spoilation of the trust funds.

Under the settled law of Texas, if there was evidence above a surmise or suspicion supporting such allegations, it was the duty of the trial court to submit such issues to a jury. *Joske v. Irvine*, 91 Texas 574, l. c. 582. In this case it is said:

"This court in Lee v. Railway, 89 Texas 588, said: 'To authorize the court to take the question

from the jury, the evidence must be of such a character that there is no room for ordinary minds to differ as to the conclusion to be drawn from it.' In Mynning v. Railway, 64 Mich., 93, the rule is stated thus: 'If the circumstances are such that reasonable minds might draw different conclusions respecting the plaintiff's fault, he is entitled to go to the jury upon the facts. The judge takes the case from the jury only when it is susceptible of but one just opinion.' The Supreme Court of the United States has approved the rule announced in Ryder v. Wombwell, supra. Improvement Co. v. Munson, 14 Wall., 442; Board of County Com. v. Clark, 4 Otto, 278; Griggs v. Houston, 14 Otto, 553.

"From a careful examination of the cases it appears, (1) that it is the duty of the court to instruct a verdict, though there be slight testimony, if its probative force be so weak that it only raises a mere surmise or suspicion of the existence of the fact sought to be established—such testimony in legal contemplation falling short of being 'any evidence,' and (2) that it is the duty of the court to determine whether the testimony has more than that degree of probative force."

Under the Texas decisions, the reversal by the Supreme Court placed the parties in the same position as they occupied before the cause was tried. The action of the Supreme Court reversing the case had the effect of granting a new trial, which by operation of law opened up the entire case. *M. H. Lauchheimer & Sons v. Coop*, ... Tex. Civ. App. ....., 86 S. W. 57.

In the reversal of the case by the Supreme Court

of Texas, it suggested an audit to determine the true facts. When this audit was made and the facts thus fully developed, it conclusively showed that the Wichita Royalty Company's present trustee, E. E. Scannell, had on the trial in the state court concealed material facts (R. 1929), and that substantially all of the alleged items complained of by the Wichita Royalty Company were shown to have been proper and right; so the case developed in the United States District Court was entirely different in many respects from the case as made which was before the Supreme Court of Texas. See *Judge Atwell's opinion*, 18 F. Supp. 795.

The remand of the case by the Supreme Court of Texas was a direction to the lower court to submit disputed issues upon the questions discussed, for jury findings. The statements by the commissioner who rendered the decision on original submission, especially in view of the opinion on rehearing, as well as the decision by the Supreme Court in the case of *Quanah, Acme & Pacific Railway Company v. Wichita State Bank & Trust Company*, 127 Texas Reports 407, would neither be an estoppel nor *res adjudicata* as to the law of the case. *Revised Statutes of Texas, Art.* 2211.

Had the case remained in the state court and on appeal to the Supreme Court of Texas, it would have been the duty of that court to declare or redeclare the law applicable to the facts found on the second appeal. By removal the Circuit Court of Appeals became the court of review and as correctly said by that court:

"We have the same right and duty to declare

or redeclare the law of this case that the Supreme Court of Texas would now have if the case had been removed." (Wichita Royalty Company v. City National Bank, Circuit Court of Appeals, 97 F. (2d) 249.)

An analysis of the four opinions by the Supreme Court of Texas, two in the case of Wichita Royalty Company v. City National Bank, 127 Texas Reports 158-184, and two in the case of Quanah, Acme & Pacific Railway Company v. Wichita State Bank & Trust Company, first case not officially reported, 89 S. W. (2d) 385, on rehearing 127 Texas Reports 407, clearly show that the Circuit Court of Appeals' opinion is in harmony with the general law of Texas.

The Supreme Court on original submission in both cases placed the bank's liability upon the doctrine of constructive notice, or a duty to inquire from suspicious circumstance,—in effect negligence. Excrept from the original opinion in the case of Quanah, Acme & Pacific Railway Company v. Wichita State Bank & Trust Company, reported in 89 S. W. (2d) 385, not printed in the official reports but withdrawn, holds:

"The decisions are practically in accord, in all cases involving deposits by fiduciaries, in holding that a bank receiving a check and placing it to the personal account of the fiduciary is liable if there are surrounding facts and circumstances of which the bank has knowledge indicating that the transaction involves a conversion and which are sufficient to charge it with the *duty of inquiry*, and

we so hold." (89 S. W. (2d) 391, Section 4; (our italics.)

Wichita Royalty Company v. City National Bank of Wichita Falls, decided by another commissioner on the same date, 127 Texas 158, 89 S. W. (2d) 394, announces the same legal principle:

> "The bank and Harrell had constructive knowledge of Peckham's dishonesty, and inquiry pursued with reasonable diligence would have disclosed the facts showing Peckham's lack of authority and breaches of trust."

This theory was repudiated by the Supreme Court on rehearing in the Quanah, Acme & Pacific case (Quanah, Acme & Pacific Railway Company v. Wichita State Bank & Trust Company, 127 Texas 407), as shown from the following quotation:

> "In our opinion, the above question (a duty to inquire) should be answered in the negative. In this connection, we think the great weight of and better authority is to the effect that it is not deemed a breach of trust, or such a suspicious circumstance, as to put a duty on the bank to investigate for a trustee to carry trust credits in his personal bank account, and this even though such fact is known to the bank. In this connection, it is generally held that the bank is entitled to believe that the trustee will check the trust credit out of his personal account for proper trust purposes. The main reasons for this rule are that to require the bank to investigate such transactions would put a

> burden on the bank for which it is not paid by the trust, and would clog the handling of commercial paper in a way that would be to the disadvantage generally of trust business, and also to business in general."

In commenting upon the Royalty Company Case, that court emphasized the fact that it was charged that the bank actively participated in the spoilation of the trust, and knowingly received a part of the fund to itself in payment of the trustee's individual debt to it. That court set at rest in Texas the conflict between those authorities holding that it was the duty of a bank to inquire when suspicious circumstances were brought to its knowledge, and the general weight of authority which holds that a bank is liable only if it acts in bad faith, as shown by the following quotation:

> "In view of this ruling we have found it necessary to choose between the conflicting decisions, and announce the general rule which we think should be followed in this state. This we have done." (1. c. 423.)

On motion for rehearing in the Wichita Royalty Company case the Supreme Court of Texas (127 Texas 184) predicates its decision upon the case of *Steere v. Stockyards National Bank*, 113 Texas 387, which was a case of commingling of funds by a trustee. The Texas courts in that case held the bank liable, not for funds disbursed from said commingled account to others, but only for such funds from such commingled account as the bank received to itself. *Steere v. Stock-*

yards National Bank, 113 Texas 387, 256 S. W. 586; also ___ Tex. Civ. App. ___, 266 S. W. 537, on rehearing in the Court of Civil Appeals from the certificate of the Supreme Court. Other leading Texas cases are:

Interstate National Bank v. Claxton, 97 Texas 569;
Coleman v. First National Bank, 94 Texas 607;
Wheeler Motor Sales Company v. Guerguin, ___ Tex. Civ. App. ___, 16 S. W. (2d) 309;
United States Fidelity & Guaranty Company v. Adoue & Lobit, 104 Texas 393.

In the last cited case the decision of the early leading case of *Gray v. Johnson*, L. R., 3 Eng. & Ir. App. Cas., 1, was expressly approved.

We submit that the decision of the court below correctly conforms to the Texas law in respect to the matters involved.

Respectfully submitted,

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APPENDIX

STATUTES APPLICABLE

Texas Civil Statutes.

Article 1. *Common Law.*

The common law of England, so far as it is not inconsistent with the Constitution and laws of this state, shall together with such Constitution and laws, be the rule of decision, and shall continue in force until altered or repealed by the Legislature.

Article 2211. *Judgments.*

The judgments of the Court shall conform to the pleadings, the nature of the case proved and the verdict, if any, and shall be so framed as to give the party all the relief to which he may be entitled either in law or equity. Provided, that upon motion and reasonable notice the Court may render judgment *non obstante veredicto* if a directed verdict would have been proper, and provided further that the court may, upon like motion and notice, disregard any Special Issue Jury Finding that has no support in the evidence. Only one final judgment shall be rendered in any Cause except where it is otherwise specifically provided by law. Judgment may, in a proper case, be given for or against one or more of several plaintiffs, and for or against one or more of several defendants or intervenors.

Article 1771. *Decision.*

In each case, the Supreme Court shall either

affirm the judgment, or reverse and render such judgment as the Court of Civil Appeals should have rendered, or reverse the judgment and remand the case to the lower court, if it shall appear that the justice of the case demands another trial.

(This article was construed in the case of *Williams v. Safety Casualty Co.*, ... Texas ....., 102 S. W. (2d) 178.)

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BRIEF OF RESPONDENTS

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BAILEY—WICHITA FALLS

INDEX

Page

Subject Index

Statement of the Case 1-13
(a) Difference between the facts here and the facts on the trial in the State Court 4- 9
(b) Findings of the United States District Court ... 10
Points of Law 13, 14
Summary of Argument 14, 15
Argument 14-52
Point 1—On the Law of the Case 15-24
Point 2—The Opinion of the Circuit Court of Appeals is not in conflict with the law of Texas 24-33
(a) The Opinion of the Supreme Court of Texas is not in conflict with the judgment and opinion of the Circuit Court of Appeals ... 24-31
(b) The test of good faith is statutory in Texas 32, 33
The National Law should Control 33-43
The Findings of the Trial Court Require an Affirmance under Petitioner's Theory 43-49
Ratification and Election 49-51
Conclusion 51
Addendum 53-59

Textbooks and Statutes Cited

Bogert on Trusts and Trustees, Sections 767, 905 ..... 39, 43

Harvard Law Review, Vol. 34, p. 480 35

Perry on Trusts, Sec. 122, p. 177, 7th Ed. 37

Texas Civil Statutes:
Article 1756 29
Article 1771 16
Article 1820 29
Article 3505 50
Article 7425b 15, 18, 32, 43

Texas Constitution, Art. 5 29

U. S. C. A., Title 12, Section 91, ... 20

Wigmore on Evidence, Section 244 40

Table of Cases Cited

Adoue & Lobit Cases, 104 Texas 379 30
American Surety Co. v. Waggoner Nat. Bank, 83 Fed. (2d) 102 37

Page

Beaver Boards Co. v. Imbrie & Co., 287 Fed. 163 36
Bischoff v. Yorkville Bank, 218 N. Y. 106, 112 N. E. 759 ..... 35, 37, 39
Burns & Ledbetter, 56 Texas 282 17

Childs v. Empire Trust Company, 54 Fed. (2d) 981 34
Clarke v. Johnston, 85 U. S. 493, 18 Wallace 21
Choate v. San Antonio & Aransas Pass Railway Co., 91 Texas 406 29

Dickinson v. Leominster Savings Bank, 152 Mass. 40 21
Dounce v. Parsons 45 N. Y. 180 42

Englar v. Offutt, 70 Md. 78, 14 Am. St. Rep. 332 42
Erie Railroad Co. v. Tompkins, 82 L. Ed. (Advance Opinions) 787 ..... 14, 15, 19, 33

Farmers State Bank of Texhoma, Okla. v. Clayton Nat. Bank, 245 P. 543, 31 N. M. 344 19
Federal Reserve Bank v. Omaha Nat. Bank 45 Fed. (2d) 511, 515 20
First National Bank v. California, 262 U. S. 366, 67 L. Ed. 1030 33
Fulton National Bank v. Hosier, 295 Fed. 611 37

Gilruth v. Decell, 16 So. 251 42
Gray v. Johnston, L. R. 3, Eng. & Irish Appeal Cases 1 38

Hill v. Wiley, 3 N. E. (2d) 1015 42

Jenson v. Toltec Ranch Co., 174 Fed. 86 43
Jones Bank v. Yates, 240 U. S. 541 20
Joske v. Irvine, 91 Texas 574 28

Kempner v. Huddleston, 90 Texas 182, 37 S. W. 1066 17
King & Worthington, 104 U. S. 44 ..... 17, 19

Lauchheimer & Sons v. Coop, 26 S. W. 57 16
Layton v. Hall, 25 Texas 204 17
Lee v. Powell, 52 So. 214, 126 La. 51 19
Lyeth v. Hoey, (Decided Dec. 5. 1938.) 33

M. & P. Bank v. Clifton, 33 S. E. 750 36
Marsh v. Marsh, 112 So. 189, 215 Ala. 571 19
Maryland Casualty Co. v. City National Bank, 29 Fed. (2d) 662 ..... 35, 39
Meyers v. Dittmar, 47 Texas 373 18
Missouri, K. & T. Ry. Co. v. City of Tulsa, 238 P. 452, 113 Okla. 21 19

Page

New Amsterdam Casualty Co. v. Banking Company, 175 Atl. 609, 117 N. J. E. 264 ..... 38, 39

Phez Co. v. Salem Fruit Union, 233 P. 547, 113 Or. 398 19
Phillipi v. Phillipe, 115 U. S. 151 21
Pierce v. Tennessee Coal, I. & R. Co., 173 U. S. 1 24

Quanah, Acme & Pacific Railway Co. v. Wichita State Bank & Trust Co., 89 S. W. (2d) 385, 93 S. W. (2d) 701, 127 Texas 407 ..... 2, 15, 16, 23, 25, 26, 32

Reeves v. Petty, 44 Texas 249 7
Robbins v. Passaic Nat. Bank. 109 N. J. Law 250. 82 A. L. R. 1368 41
Rodgers v. Bankers' Nat. Bank, 229 N. W. 90, 179 Minn. 197 40

Shotwell v. Sioux Falls Savings Bank, 34 South Dakota 109 37
Spallholz v. Sheldon, 216 N. Y. 205, 110 N. E. 431 21
State v. Red River Lumber Co., 195 N. W. 495, 157 Minn. 7 19
Steele v. Randall, 19 Fed. (2d) 41 20
Steere v. Stockyards Nat. Bank, 113 Texas 387 ... 28, 31, 37
Story Parchment Co. v. Paterson Parchment Paper Co., 282 U. S. 555, 75 L. Ed. 544 51

Tyrell Trust v. Lovell, ... Texas ..., 27 S. W. (2d) 142 50

Union Stockyards Nat. Bank v. Gillespie, 137 U. S. 411, 34 L. Ed. 724 31
United States v. Wardwell, 172 U. S. 48 21
United States Annuity & Life Insurance Co. v. Peak, 1 A. L. R. 1270 17
U. S. F. & G. Co. v. Union Bank & Trust Co., 228 Fed. 448 21

Waggoner Estate v. Wichita County, 273 U. S. 566 25
Wichita Royalty Co. v. City National Bank, 89 S. W. (2d) 399, 93 S. W. (2d) 143, 127 Texas 158, 95 Fed. (2d) 676, 97 Fed. (2d) 250, 18 Fed. Supp. 797 ..... 2, 3, 4, 5, 6, 7, 8, 10, 12, 13, 25, 26, 27, 29, 32
Williams v. Conger, 125 U. S. 397 24

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BRIEF OF RESPONDENTS

STATEMENT OF THE CASE

This case originated in the State Court in the year 1930. It was a suit by the Bank upon a promissory note. To this suit a cross action was filed in April, 1931, by the Royalty Company (R. 1972), wherein it was alleged that the Bank and Harrell, its president, became liable to the Royalty Company by knowingly participating with its trustee in the spoilation of the trust and by accepting funds of the trust in payment of the trustee's individual debt. It was also alleged that the circumstances in the handling of the account charged the Bank with notice and knowledge of the trustee's wrong.

The case was tried before a court and jury and at the conclusion of the trial a peremptory instruction was given to find for the plaintiff bank against the defendant, the Wichita Royalty Company.

After an appeal and affirmance by one of the Courts of Civil Appeals, 74 S. W. (2d) 661, the judgment of the trial court was reversed and remanded by the Supreme Court of Texas. (*Wichita Royalty Company v. City National Bank*, 127 Texas 158.)

The Supreme Court of Texas considered this case along with the case of *Quanah, Acme & Pacific Railway Company v. Wichita State Bank & Trust Company*, 89 S. W. (2d) 385, involving a similar question. Both cases were decided on original submission on the same day and substantially the same conclusions were reached in each of the two cases, holding the bank to a strict liability in accordance with the Minority Rule requiring bankers to inquire into the conduct of trustees where suspicious circumstances might lead to the discovery of a breach of trust,—a doctrine of constructive notice. The opinion in the Royalty Case refers to the Railway Case opinion.

On rehearing in the Quanah, Acme & Pacific Railway Case this doctrine was expressly repudiated. But inasmuch as the appeal in the Wichita Royalty Case was an appeal from an instructed verdict, wherein issues of fact were raised as to the Bank's active participation and receipt of trust funds on the indebtedness of the trustee, the motion was overruled, remanding the case to the lower court for a new trial. The Commissioner in overruling such motion stated that the findings of fact as to liabilities of the Bank were not stated as finalities,

and that issues of fact as to such questions of liability on the part of the Bank were not foreclosed.

On this question the Court says:

> "*It is not intended by anything said in the original opinion to foreclose upon another trial the question of whether the items contended by the Bank to constitute the* $5,500.00 *were used for authorized trust purposes; or to foreclose any purely fact finding that may be made from the evidence that may be adduced upon another trial.* The suggestion in the original opinion that an audit should be made for use upon another trial, and the statement that the various sums therein referred to were not stated as *finalities, were indicative of such intention.*" (93 S. W. (2d) 143, 144.) (Italics ours.)

After the return of the suit to the trial court, an amended cross petition was filed by the Royalty Company, making additional parties, injecting the Federal Laws into the case, and claiming other and additional items of recovery from those involved in the original cause. (R. 190-231.)

Acting upon the suggestion of the Supreme Court, both the Bank and the Royalty Company caused a complete audit of all the transactions between Peckham, individually and as trustee, with the Wichita Royalty Company, as well as with the Bank and Harrell, to be made.

The result of the Bank's audit is shown by the testimony of P. H. Lambert, C. P. A. (R. 1436-1513), and by the Plaintiff's Exhibits 207, 208, 209, 210, 210a, 211, 212, and 212a. (R. 1346-1511.)

The result of the Royalty Company's audit is shown

by the testimony of M. E. Wallace, C. P. A. (R. 1648-1734; Defendant's Exhibit 187, beginning at R. 1683.) The trial court accepted Lambert's audit.

In the audit of P. H. Lambert each transaction wherein funds were transferred from the Royalty Company account to the individual account of Peckham, from the very beginning of his tenure, was traced and explained. This resulted in an entirely different state of facts from that found by the Court of Civil Appeals, upon which the Supreme Court based its opinion. And, in order to show that there is no conflict between the holding of the Circuit Court of Appeals and the United States District Court and the Supreme Court of Texas on the issues involved, we briefly refer to the holding of the Supreme Court on the evidence introduced on the first trial and the holding of the Federal Court on the evidence introduced on the second trial.

DIFFERENCE BETWEEN RECORDS IN FIRST TRIAL AND SECOND TRIAL

(a) The main item that the Supreme Court of Texas fixed liability on the Bank and Harrell in its opinion, was based upon a certain $5,500.00 check deposited to the credit of G. W. Peckham in October, 1925. (89 S. W. (2d) 399, 93 S. W. (2d) 143.)

Upon the trial of the case the *first time* in the State Court, the evidence reflected, and the Supreme Court so held, that Peckham illegally withdrew from the Royalty funds on October 8, 1925, $5,500.00, and that there was no evidence of any balance standing to Peckham's credit in said Bank, or of any other deposit of funds credited to his account, between said

date of transfer and November 17, 1925, at which time Peckham made his first payment out of his account on his indebtedness to the Bank. (89 S. W. (2d) 399.)

Upon the *second trial*, in the Federal Court, it was conclusively shown that every penny of this $5,500.00 item was properly accounted for and all of it was expended in the acquisition of royalties for the Royalty Company. (R. 817-820.)

* * *

(b) The Supreme Court, likewise, fixed liability upon Harrell by virtue of a certain purchase, known as the Stephens Royalty. On the *second trial* in the Federal Court, it was conclusively shown that same was purchased by Peckham for the benefit of the Royalty Company; however, at the time of the purchase, Harrell and his associates thought that the transaction was for Peckham's individual benefit. This property was valuable royalty, and all the proceeds were received by the Royalty Company and said property was sold by Scannell after he became Trustee, and prior to the filing of the Royalty Company's Cross Action. (R. 822-839, R. 1447-1449.)

(c) Upon the trial of the case the *first time* the Royalty Company sought to recover an item of $6,000.00, which was received by Peckham, through the Security National Bank, and the Supreme Court so declared its right to recover this item. (89 S. W. (2d) 403.)

Upon the trial of the case the *second time* in the Federal Court, the evidence conclusively showed that the Bank and Mr. Harrell had nothing to do therewith, and in fact the Royalty Company withdrew this claim. (R. 841, 853.)

* * *

(d) Upon the trial of the case the *first time*, the record reflected, and the Supreme Court so declared, that Peckham's appointment of E. E. Scannell, as Secretary and Treasurer, was in violation of the provisions of the Declaration of Trust under which Peckham acted as Trustee. (*Bank v. Royalty Company*, 89 S. W. (2d) 405.)

Upon the trial of the case the *second time*, in the Federal Court, this was completely refuted by additional evidence and the Court so found. (95 Fed. (2d) 676.)

* * *

(e) The Supreme Court of Texas fixed liability upon the Bank and Harrell with respect to the Marlborough property, by virtue, at least in part, of Scannell's testimony that the deed was not delivered and that the transaction was personal to Peckham, but on the *second trial* in the Federal Court it was conclusively shown that J. A. Kemp and J. T. Harrell entered this venture with G. W. Peckham and his brother, W. H. Peckham, and that Kemp and Harrell contributed their full pro rata share of the funds for the acquisition and improvement of this property. It was further conclusively shown that this sale of the Marlborough Property by Peckham to the Wichita Royalty Company, was without the knowledge of Harrell or Kemp, and Peckham's letter to the Wichita Royalty Company (which was without the knowledge of Kemp or Harrell and which was concealed by Scannell in the first trial) reflected the reasons therefor:

"While one-half (1/2) of Marlborough Addition belongs to the Wichita Royalty Company, it is held in my name because of the fact that the other

owners would not care to be associated with a stock company, but are willing to be partners with me as an individual."

The evidence on the *second trial* was sufficient for the Trial Court to find that the stockholders of the Royalty Company had knowledge of the purchase by Peckham of the Marlborough Addition because the Royalty Company records reflected that for more than 2½ years each and every expenditure made on the Marlborough property was recorded in the Royalty records and reflected the ownership of the Royalty Trust of one-half interest in and to the Marlborough properties (and the record further reflected that E. E. Scannell had concealed from the Bank and Harrell the deed that had actually been delivered to the Royalty Company of one-half interest in the Marlborough transaction), and this fact, together with the fact that each six months during Peckham's administration reports were made to the stockholders, showing the respective purchases prior thereto, justified a finding that this report was concealed by E. E. Scannell, and hence the stockholders were in fact apprised of the purchase of the Marlborough property. (18 Fed. Supp. 797, 799.)

* * *

(f) On the trial in the State Court, the evidence reflected, and the Supreme Court declared, that "* * * Peckham's Deed purporting to convey the Marlborough property to the Trutee, was not delivered by Scannell, and title to the property was never accepted by the trustee." (89 S. W. (2d) 403.) * * * However, on the re-trial, in the Federal Court, it was conclusively shown, without dispute, that *Scannell had concealed the true facts* in the trial in the State Court with reference to the delivery of this deed.

(R. 784-786.) A letter was in the file * * * discovered by the Bank's auditor * * * signed by Peckham, which showed an unconditional delivery of this deed. And the Trial Judge, on this question, said:

> "Scannell claimed at that trial (referring to the *first trial* in the State Court) that a deed had been given to the Trustee by Peckham, but that Peckham had cautioned him to keep it quiet, and under his testimony it appeared not to have been legally delivered to his principal, a claim dissipated at this trial." (18 Fed. Supp. 799.) (Italics ours.)

* * *

(g) In the trial of the case the *first time* in the State Court, the Supreme Court declared that the evidence did not reflect that the stockholders had any evidence calculated to arouse an inquiry on their part concerning their Trustee, Peckham. (*Royalty Co. v. Bank*, 89 S. W. (2d) 406.)

The evidence on the trial in the Federal Court reflected that minute memoranda of all the transactions of Peckham were inscribed on the record of the Royalty Company, and in most, if not all, instances reported to the stockholders in periodical communications from the trustee. Such communications were shown in the record, with the exception of the semi-annual report in June, 1926, which was the date of the first report after the acquisition of the Marlborough property. (*Bank v. Royalty Co.*, 18 Fed. Supp. 797.)

* * *

(h) In the first suit the transactions only went back to October 8, 1925, and included the Marlbor-

ough transaction and certain royalty purchases, as follows:

Ellis County, Oklahoma, Royalty.
Hartley County Royalty.
Porter Ranch Purchase.
North Anderson Ranch and Polk Lands.
Stephens Royalty.
Gray and Wheeler County Royalties.

(The latter being omitted on this trial after they had become valuable.)

Peckham became trustee in January, 1923. (R. 366.) Later, on June 18, 1936, nearly seven years after the death of Peckham and more than five years after, admittedly, Scannell and the shareholders were familiar with all the claimed wrongs on the part of Peckham and the Bank, the "Third Amended Cross Action and Bill of Interpleader" was filed (such being the pleading upon which this cause was removed to the Federal Court, R. 33), which included new items, such as the Grimshaw (purchased in 1923), the L. F. Wilson Royalty, the South Anderson and Pointevent Properties, the White Lease, the Routon Royalty, the Millner Oil Payment, the Curtis Lane Royalty, a Studebaker car, and salary payments to Peckham during his entire tenure of office, and it was proven that the checks for all these purchases were currently returned to the Royalty Company and the voucher notation showed what each transaction was for; also that prior to the time of Peckham's tenure Scannell, who worked for the former trustee, adopted a method of making checks for disbursements payable to the payee bank. (R. 1465.)

* * *

(A complete analysis of each and every item complained of by petitioner is inserted in this brief as an Addendum, and, following said analysis, we call the Court's attention to many inaccurate and biased statements set forth in petitioner's complete brief. See pp. 53-59 of this brief.)

There was a conflict in the testimony in respect to the findings and conclusions of Auditor Lambert and Auditor Wallace. Lambert testified and showed from his exhibits that the first receipt of money belonging to the Royalty Company by the Bank in payment of any individual indebtedness of Peckham was on January 19, 1927, and it amounted to $1,287.11. (R. 1443.) Wallace makes it an earlier date, but the trial court found in favor of Lambert's testimony, tersely setting forth his reasons as follows:

> "In weighing Carson and Lambert against Wallace I have taken into consideration the fact that Carson has gone into exhaustive detail—having spent many months in the examination, as has also Lambert. Wallace spent a much shorter time and seems to have been misled, at any rate, to some extent, by confusion resulting from his determination to charge to Peckham, as improper withdrawals, approximately $30,000 in salary." (18 F. Supp. 798; R. 1928.)

All subsequent checks after this date made by Peckham on the Royalty account that are in any manner questioned do not aggregate the amount of the plaintiff's note indebtedness of $22,000.00. (See Plaintiff's Exhibit 212, R. 1477-1493.)

Scannell, the present trustee, the principal actor in

this case, occupies an unenviable position. He was office manager of the trust during the tenure of G. W. Peckham as trustee. He occupied the same position with the former trustee, Robertson. (R. 652.) It was Scannell, as such officer, who originated and was responsible for the plan of drawing checks payable to the order of the payee bank for general disbursements. This was a custom originated by Scannell during the administration of the predecessor trustee, Robertson, and carried on by him during Peckham's trusteeship. (R. 1465.)

Scannell handled practically every transaction complained of. He signed the checks and prepared the voucher notations accompanying the same. These showed correctly the purpose for which they were given. Scannell knew about each and every transaction at the time it happened. (R. 652-731.)

Peckham was of good reputation. (R. 425.) He died suddenly, without forewarning, and before he had time to arrange his financial affairs. (R. 426.)

Scannell was appointed to succeed him. After he was appointed he made an audit and determined an indebtedness due the Royalty Company by Peckham of some $19,000.00. This he prepared in the form of a claim and presented it to the administrator, which was disallowed, and no suit was ever filed as required by the Texas statutes to establish it. (R. 805-806.)

In the State suit one of the principal issues related to the delivery of a deed from Peckham to the Royalty Company, conveying a one-half interest in Marlborough Addition. On that trial Scannell falsely testified that the deed was not delivered and thus secured a finding to that

effect by the appellate courts. On this trial, at first, he gave the same testimony until confronted by a letter found by the Bank's auditors in the files of the Royalty Company, showing its delivery, with memorandum thereon in Scannell's handwriting. (R. 785-786.) Then he admitted the letter and the delivery. (R. 786.)

Discussing the decision of the Commisison of Appeals by Judge Taylor, Judge Sibley says:

> *"That decision is not res adjudicata because it was not a final judgment. It affirmed no judgment but reversed it and directed a new trial.* • • • *No doubt it would have been accepted as the law of the case on the same facts upon a retrial in the state court, and ought to have been so regarded in the District Court.* • • • and this court is its successor as the appellate tribunal for this case. *It has the same power to correct what may be clearly wrong.*" (95 Fed. (2d) 675.) (Italics ours.)

Judge Sibley again announced this principle in his opinion on rehearing, as follows:

> "• • • we have the same right and *duty* to declare or *re-declare* the law of *this case* that the Supreme Court of Texas would now have if *the case* had not been removed. • • • The opinion in the Wichita Royalty Company Case was reviewed and explained as 'an action where it was charged *that the Bank actively participated in the spoilation of the trust fund and knowingly received a part of the fund to itself in payment of the trustee's individual debt to it.' We have held the bank liable in so far as it did that.* Since in the Quanah Case the Supreme Court holds that the law of Texas is what for want of a better

term we may call the general law on the subject involved here, and accordingly adopts rules generally followed in other States, *we think our conclusions are in line with the law of Texas and that there is no occasion for a rehearing.*" (97 Fed. (2d) 250, 251.) (Italics ours.)

There is no evidence or findings that there was any actual participation or knowledge in Peckham's wrong by the Bank or its officers, unless the receipt of funds, determined by a method of tracing into Peckham's individual account, could be said to constitute notice of Peckham's misuse of trust funds.

POINTS OF LAW

I

Does the decision of the Texas Supreme Court on a former appeal upon different facts control as the law of the case, and, if so, is this decision contrary to the decision of the United States District Court and the Circuit Court of Appeals?

II

Is the opinion of the Circuit Court of Appeals in this case in conflict with the law of Texas, as declared by the statutes and opinions of the Supreme Court of this state?

III

This being a suit against a national bank, an agency of the National Government in relation to its primary duty—that arising from the receipt of deposits—the defi-

nition of that duty is to be found in the national laws, especially if as an incident to that duty, it is held that there is an affirmative duty in the nature of suretyship to supervise all accounts of fiduciaries, although there is no bad faith and no knowledge of wrongdoing. Therefore, the case of *Erie Railroad Company v. Tompkins* has no application.

IV

If as contended by petitioner, that notice of the trustee's wrong is conclusively imputed to the Bank on and after the Bank receives payment upon the individual debt of the trustee from funds that can be traced into the individual account of the trustee from a deposit of trust funds, do not the facts as found by the trial court, that the first of such receipts was had on January 19, 1927, require an affirmance of this case, in that the total items complained of after such date did not equal the amount of admitted indebtedness owing by the trust to the Bank?

SUMMARY OF ARGUMENT

I The doctrine of the law of the case has no application. (pp. 15-24.)

(a) The judgment of the Supreme Court of Texas on the first appeal remanded the case for a new trial in its entirety; therefore, it had no finality. (p. 15.)

(b) The doctrine of the law of the case does not have the sanction of the Supreme Court of Texas. (pp. 17, 18.)

(c) The law of the case has no application where

new parties are made and new issues and evidence introduced. (pp. 19-23.)

II The test of a bank's liability in the handling of accounts of fiduciaries, as laid down by the Supreme Court of Texas, is good faith, and the opinion of the Circuit Court of Appeals on this question is in harmony with the laws of Texas. (pp. 24-33.)

(a) The more recent decision, the case of *Quanah, Acme & Pacific Railway v. Wichita National Bank & Trust Company*, 127 Texas 407, announces this rule. (pp. 24-31.)

(b) The statutory test in Texas is good faith, as defined by Article 2475b, Texas Civil Statutes. (pp. 32, 33.)

III The suit being against a national bank on a deposit liability, the case of *Erie Railroad Company v. Tompkins* has no application. (pp. 33-42.)

IV An affirmance of the case is required, even under the petitioner's theory. (pp. 43-49.)

(a) The trial court found that the first receipt of trust funds by the Bank was on January 19, 1927. (p. 46.)

(b) All subsequent transfers from the Royalty account to the individual account of Peckham since that date do not aggregate the amount of the Royalty Company's admitted indebtedness to the Bank. (p 48.)

THE LAW OF THE CASE

Does the original opinion of the Supreme Court constitute the law of the case?

This opinion must be considered not only along with the opinion on rehearing but also in connection with the opinion on rehearing in the *Quanah, Acme & Pacific Railway Company v. Wichita State Bank & Trust Company*, supra, wherein the decision in the case of the Wichita Royalty Company was expressly referred to and was explained as involving an action where it was *charged* that the Bank actively participated in the spoilation of the trust fund and *knowingly* received a part of the fund to itself in payment of the trustee's individual debt to it. (127 Texas 421, 422.)

The Supreme Court of Texas remanded this case in its entirety. No final decree of any kind was entered and under the Texas statutes the reversal by the Supreme Court placed the parties in the same position as they occupied before the cause was tried. *Lauchheimer & Sons v. Coop* (Tex. Civ. App.), 86 S. W. 57; *Texas Revised Statutes*, Art. 1771.

The petitioner does not complain of the judgment of the Circuit Court of Appeals in reversing the case, its complaint being that the Court did not follow as "the law of the case" the former opinion of the Supreme Court in this very case, and the assumption on the part of the Circuit Court of Appeals that it, as the successor, as the appellate tribunal in this case, had the power in like manner, as the Supreme Court of Texas would have, to correct what might be clearly wrong. (See Petitioner's Brief, p. 12.)

It is conceded by most, if not all, of the courts that a question considered and determined on a first appeal of a case is as a general rule the law of the case on a

second appeal, and, consequently, not open to re-examination. There are numerous exceptions to this rule and the modern trend of the decisions is that if the prior decision is "clearly, principally, emphatically, or palpably erroneous, it is competent for the Court to correct it on a second review. (See notes, *United States Annuity & Life Insurance Co. v. Peak*, 1 A. L. R. 1270, and cases cited.)

The doctrine of the law of the case has had scant sanction or approval by the Supreme Court of Texas, and the United States courts have never held that the law of the case runs from State to Federal courts. *King v. Worthington*, 104 U. S. 44.

It has long been established in Texas that the appellate court is not bound on a second appeal by its pronouncement in its opinions rendered on a previous appeal. In an early case, *Layton v. Hall*, 25 Texas 204, the Supreme Court held that its former opinion was insupportable on principle and should be overruled.

Again, in the case of *Reeves v. Petty*, 44 Texas 249, the Supreme Court on a subsequent appeal held that its prior decision had overturned an established rule of property, and therefore should be disregarded.

In the case of *Burns v. Ledbetter*, 56 Texas 282, where on the original appeal the case was reversed and remanded, the Court said that, despite its previous opinion, the question should be regarded as still open, and that court could and should re-examine the same.

Judge Brown, of the Supreme Court of Texas, in the case of *Kempner v. Huddleston*, 90 Texas 182, 37 S. W. 1066, tersely states the rule:

> "To the first question propounded, we answer that the former decision of the court in this case constitutes no bar to the consideration of the same question on a second appeal."

As said in the case of *Meyers v. Dittmar*, 47 Texas 373, where the same court in another case had laid down a different rule:

> "But the law, as ruled in the cases, is, unquestionably, contrary to the practice of this court, and has never received its sanction or approval. (40 Tex. 225; 25 Tex. 204;) and, at present, at least, we see no reason for its adoption."

Now, in this case it appears that the Supreme Court of Texas inadvertently overlooked and nullified a plain statute of the State, to wit, Art. 7425b. This statute defines precisely the duty of one dealing with a trustee and makes good faith the test.

The Supreme Court of Missouri held that where that court on a former appeal had overlooked a statute which was controlling it could clearly correct such error on a second appeal:

> "But where such reasons are clearly shown, and especially where the former ruling inadvertently overlooked and nullified a statute, or overruled some sound and well-settled principle of law, such as was done by this court on the former appeal in this case, we should have no hesitancy whatever in overruling the former decision and re-examining on the second appeal."

The law of the case is a rule of practice and its ordi-

nary signification does not run from the State to Federal court. *King v. Worthington*, 104 U. S. 44.

As the successor appellate tribunal, unquestionably the Circuit Court of Appeals had the same right to declare or redeclare the law of Texas, as would have had the Supreme Court of Texas had the case remained in the State Court.

If, as established by the Supreme Court of Texas, that court could on a second appeal re-examine into and correct palpable errors arising on the first appeal, unquestionably the Circuit Court of Appeals, as the successor appellate tribunal, would have like power. Unless this follows, the courts of the United States would be compelled to follow error. Such is not the effect of the requirement as laid down in the case of *Erie Railroad Company v. Tompkins*, 82 L. Ed. (Advance Opinions) 787.

Where the rule as to the law of the case is applied, it is held that it has no application where new parties are made who have substantial rights.

Marsh v. Marsh, 112 So. 189, 215 Ala. 571;
State v. Red River Lumber Co., 195 N. W. 495, 157 Minn. 7;
Farmers' State Bank of Texhoma, Okla. v. Clayton Nat. Bank, 245 P. 543, 31 N. M. 344;
Missouri, K. & T. Ry. Co. v. City of Tulsa, 238 P. 452, 113 Okl. 21;
Phez Co. v. Salem Fruit Union, 233 P. 547, 113 Or. 398;
Lee v. Powell, 52 So. 214, 126 La. 51.

In this case, after the same had been remanded and

after the City National Bank of Wichita Falls had closed its doors (at the time of the National Banking Holiday) and had gone into voluntary liquidation, the Liquidating Agent and the new bank (City National Bank in Wichita Falls), which took over the assets of the old bank, were made parties defendant; also its former directors were made parties defendant for alleged violation of their duties as trustees under Title 12, Section 91, U. S. C. A. It was in consequence of these Federal issues that the case was removed to the Federal Court. As to the duties of national bank directors defined by statute, they are governed by Federal laws. *Jones Bank v. Yates*, 240 U. S. 541.

So, also liabilities visited upon the new bank, involving its relations to the old bank, which had gone into voluntary liquidation. *Federal Reserve Bank v. Omaha Nat. Bank*, 45 Fed. (2d) 511, 515; *Steele v. Randall*, 19 Fed. (2d) 41.

Another exception to the rule known as "the law of the case" is this: It necessarily has no application to issues not considered originally, and has no application if the facts are substantially different, so as to affect questions of law actually decided. There was no direction that a judgment be entered in favor of the Royalty Company, but only that the facts be reinvestigated to determine the issues of fact regarding the actual participation by the old bank in the alleged wrongdoing of Peckham.

Ultimate issues not in the case when before the Supreme Court of Texas are as follows:

First: It is stated by petitioner that the Supreme

Court passed on the matter of limitation. This is incorrect certainly as to the items not in the original suit but in the amended pleading. Peckham died November 7, 1929. When a trustee dies, limitation begins to run, because the trust terminates and the duty of accounting then arises. *Spallholz v. Sheldon*, 216 N. Y. 205, 110 N. E. 431; *Clarke v. Johnson*, 85 U. S. 493, 18 Wallace Aside from that, by February, 1931, (date of original cross action) Scannell knew of Peckham's alleged unfaithfulness and wrote the shareholders he had discovered such. (R. 678.) This put them upon every inquiry and started limitation. *Phillipi v. Phillipe*, 115 U. S. 151 A suit in 1937 was too late.

The original cross action, filed February 14, 1931, sued for an alleged deposit liability, but attacked no transaction prior to October 8, 1925. The amended cross action, filed June 18, 1936, (R. 33) or more than four years after the account was closed and after the Royalty Company knew that the Bank denied any liability on account of deposits or otherwise, involved approximately $130,000.00 of additional items. Any recovery of these was clearly barred by limitation. (See *U. S. F. & G. Co. v. Union Bank & Trust Co.*, 228 Fed. 448 (C. C. A. 6); *United States v. Wardwell*, 172 U. S. 48; *Dickinson v. Leominster Savings Bank*, 152 Mass. 40.)

These items were not recoverable for additional reasons:

1. $31,500 thereof covered salary checks drawn by Peckham in his own favor and honored by the Bank. These salary items ran back to the time of his appointment from

January 2, 1923, up to the time of his death, but were not included in the original suit.

2. Certain of the items sued for in the amended pleading covered royalties as follows:

At the time the original suit was filed, Scannell elected to keep these royalties. Later, some six years, he says that he desires to change his position and reject these royalties. (R. 1181-2; 809.)

The Supreme Court of Texas did not hold (and we submit that no court will hold) that an election once made may be rejected some six years afterwards, especially where oil properties are involved.

Another and to our mind important fact not before the Supreme Court of Texas originally is this: The Record upon the first trial carried back the account of George W. Peckham as an individual only to October 8, 1925, and the opening deposit was of a $5,500 check drawn on the Royalty Company.

On this trial the account of Peckham as an individual was shown to have its inception long prior to his appointment as trustee in lieu of R. R. Robertson, and it was further shown that the account was extremely active.

It was further shown on this trial that Scannell had been with Robertson and that the method of business pursued (whereby monies drawn were drawn from the Royalty Company account and deposited to the individual account) had been pursued by Robertson while conducting business in the Security National Bank. This, of course, was not known to the City National Bank, but is a circumstance indicating approval of the method of doing

business. The Record does show, however, that very shortly after Peckham became trustee this practice, so started under Robertson, was continued by Scannell and Peckham, and that checks were returned monthly.

It is now claimed that the stockholders never audited the account of either Robertson or Peckham (they were clearly under the duty of auditing Robertson's account after he resigned, if they wanted to complain of his conduct). But this want of audit was a matter with which the City National Bank, in the nature of things, was not familiar. It, as a reasonably prudent person, looking to the appearance of things, had a right to presume that the method pursued for over two years prior to the time that any complaint can now be made had met with the express approval of the stockholders.

We quote from the opinion of the Supreme Court of Texas on rehearing in the *Quanah, Acme & Pacific Case*, as follows:

> "This bank had no actual knowledge that Hawkins was embezzling the funds of his principal. We think such a record falls far short of presenting facts legally sufficient to show that this bank acted in bad faith in purchasing these bills. In fact, we think that we have a right to presume that ordinarily careful people look over their bank accounts frequently. Empire Trust Co. v. Cahan, 274 U. S. 473, 47 S. Ct. 661, 662, 71 L. Ed. 1158, 57 A. L. R. 921. We quote the following from the opinion in the Cahan case: 'Careful people generally look over their bank accounts rather frequently'."

We submit that a practice which met with the apparent approval of the shareholders of the Royalty Company

for over two years should not, as the Supreme Court of Texas indicates, in a case where the facts were presented, be subsequently produced as a basis to show wrongdoing. If reliance thereon negatives bad faith in the one case, it should in the other.

The above are in addition to matters heretofore mentioned as being new matters arising on this trial.

Williams vs. Conger, 125 U. S. 397, strongly relied upon by petitioner, is a case wherein the Supreme Court of Texas had finally passed upon the admissibility in evidence of a certain power of attorney dealing with lands in Texas (falling probably within the binding effect of a rule of property). The Supreme Court of the United States agreed with the correctness of the holding of the Supreme Court of Texas, but stated that nevertheless it felt bound to recognize this final decision. No Federal statute to this effect is cited.

This case has been referred to by the Supreme Court of the United States only on one other occasion (so far as we have been able to ascertain), in the case of *Pierce v. Tennessee Coal, I. & R. Co.*, 173 U. S. 1.

Did the Circuit Court of Appeals fail to follow the decision of the Texas Supreme Court, as well as the statute law of Texas in deciding this case?

To determine what is the law of the State in accordance with the Erie Railroad decision, we must not look alone to a single decision of the State but to the whole body of the law on the subject as laid down by the statutes and the decisions of that state. If the decisions of the State, as announced by its highest court on a subject,

are uncertain, confusing, or in conflict, then it is the duty of the Supreme Court of the United States to reconcile the conflict and to clarify the confusion, as if it were the Supreme Court of such state. *Waggoner Estate v. Wichita County*, 273 U. S. 566.

The case of *Wichita Royalty Company v. City National Bank*, 127 Texas 158, was considered by the Supreme Court along with and at the same time as the case of *Quanah, Acme & Pacific Railway Company v. Wichita State Bank & Trust Company*. Both cases were argued at the same time and decided at the same time on original submission. Each case involved similar questions and the original decisions in each case were in accord.

In the Quanah, Acme & Pacific Railway Company case only one question was involved,—whether or not the facts alleged constituted such notice as to incite inquiry and suggest warning.

In the Wichita Royalty Case it was charged and evidence was offered to support three basic grounds of recovery. First, actual participation with and the knowledge on the part of the Bank and its officers, of the trustee in misappropriating trust funds. Second, receipt of funds belonging to the trust by the Bank in payment of the trustee's individual debts. Third, that the Bank was possessed of knowledge if reasonably inquired into would have enabled it to have known the purpose of Peckham's acts in withdrawing funds from the account of the Royalty Company and depositing the same to his personal credit, that is, constructive notice. (R. 1192; see Royalty Company's cross petition in State Court, R. 1183-1212.)

In the first decision of the Quanah, Acme & Pacific

Railway Company Case, the Commission of Appeals, through Judge German, said:

> "The decisions are practically in accord, in all cases involving deposits by fiduciaries, in holding that a bank receiving a check and placing it to the personal account of the fiduciary, is liable if there are surrounding facts and circumstances of which the bank has *knowledge* indicating that the transaction involves a conversion and which are sufficient to charge it with the duty of inquiry, and we so hold." (89 S. W. (2d) 391, par. 4.) (Italics ours.)

By the same logic it was said in the case of *Wichita Royalty Company v. City National Bank*, 127 Texas 176, 89 S. W. (2d) 403:

> "The bank and Harrell had constructive knowledge of Peckham's dishonesty, and inquiry pursued with reasonable diligence would have disclosed the facts showing Peckham's lack of authority and breaches of trust."

In the decision of the Quanah, Acme & Pacific case on rehearing this doctrine was repudiated and the liability of a bank was placed upon whether or not it acted in good faith. The Court says:

> "To render the bank liable it must have knowledge of the trustee's intention to misappropriate the funds." (127 Texas 421.)

And again:

> "In view of this ruling we have found it necessary to choose between the conflicting decisions, and announce the general rule which we think should be

followed in this State. This we have done." (127 Texas 423.)

The Supreme Court refers in its opinion to the Royalty Case. It says:

"Also, we have again carefully reviewed the opinion in the Wichita Royalty Co. et al v. City National Bank of Wichita Falls case, 127 Texas 158, 89 S. W. (2d) 394, decided by this court on the same day the case at bar was originally decided. The Wichita Royalty Company case involved an action where it was charged that the bank actively participated in the spoilation of the trust fund and knowingly received a part of the fund to itself in payment of the trustee's individual debt to it. The general principle of law involved in the Adoue & Lobit case was involved in the Wichita Royalty Company case, supra. We are satisfied with our opinion in the Wichita Royalty Company case as explained by our opinion on rehearing in that case." (127 Texas 421, 422.)

On rehearing in the Royalty Case the Court did not decide issues of fact as finalities. It says:

"It is an open question upon another trial of the case within the principles of law stated in the opinion on original hearing, whether the Bank first acquired knowledge of Peckham's dishonesty on November 17, 1925. * * *

"It is not intended by anything said in the original opinion to foreclose upon another trial the question of whether the items contended by the Bank to constitute the $5,500 were used for authorized Trust purposes; or to foreclose any purely fact finding that may be made from the evidence that may be adduced

upon another trial. The suggestion in the original opinion that an audit should be made for use upon another trial, and the statement that the various sums therein referred to were not stated as finalities, were indicative of such intention." (127 Texas 184, 185.)

The Court then refers to the case of *Steere v. Stockyards National Bank*, 113 Texas 387, as controlling, which case involves nothing but the restoration of what the bank had itself received.

Under the Texas practice it is important to consider that the appeal of the Wichita Royalty case was from an instructed verdict. It is the settled law in this State that, if an issue of fact is raised, either in law or in an equity case, such issue is triable to a jury. *Joske v. Irvine*, 91 Texas 574.

In the Royalty Case there were allegations made and proof offered to support the charge that the Bank actually received to itself a part of the trust funds. There were also allegations made and proof offered to support an actual participation on the part of the Bank and its officers, with knowledge on their part that the trustee was misappropriating funds belonging to the trust.

It is these two grounds of recovery that raised issues of fact triable to a jury in the State Court and before the Chancellor in the United States Court.

A reference to the practice before the Supreme Court in such cases is, we consider, helpful. Under the Constitution and statutes of this State the judgment of the Courts of Civil Appeals is conclusive upon the facts. The Supreme Court can only pass upon the questions of law.

It must accept as conclusive the facts found by the Court of Civil Appeals. *Texas Constitution, Art.* 5, *Sec.* 6; *Revised Statutes of Texas, Art.* 1820; *Revised Statutes of Texas, Art.* 1756; *Choate v. San Antonio & Aransas Pass Railway Company,* 91 Texas 406.

The facts upon which the Supreme Court based its decision were found by the Court of Civil Appeals in the case of *Wichita Royalty Company v. City National Bank,* 74 S. W. (2d) 661, on rehearing 682, 683. It was held by the Court of Civil Appeals that the evidence did not justify a submission of the Bank's knowledge or its participation to the jury. That Court said:

> "The full import of that evidence was to warrant a surmise or suspicion of wrongful collusion by Harrell with Peckham in a scheme by the latter to misappropriate trust funds, in spite of Harrell's positive testimony to a contrary effect, and therefore it amounted to no more than a scintilla of proof, which was insufficient as a matter of law to support the charge so made against him personally." (74 S. W. (2d) 671, par. 6.)

Therefore, the final decision of the Supreme Court must be considered in the light of whether or not there was evidence to support any of the grounds of recovery asserted by the Royalty Company, as the settled law in Texas is:

> "Whether there be any evidence or not is a question for the judge; whether it is sufficient is a question for the jury." (Choate v. S. A. & P. Ry. Co., 91 Texas 409.)

If the test of a bank's liability in handling accounts

of fiduciaries is measured by good faith, then it is a question of proof and not of presumption. It is essential, in order to establish a bank's liability, to prove knowledge. Receipt of trust funds for the payment of the individual debt of the trustee might under certain circumstances establish knowledge of misuse of such funds.

If the trustee issues a check on the trust account to the bank for his individual note, the bank would know that it was wrong. If, as in the *Adoue & Lobit* cases, 104 Texas 379, the bank knowingly received trust funds in payment of the individual debt of a guardian and in the same transaction permitted the guardian to pay another individual debt, such as was held by the court, would constitute knowledge, because the payment to the third party was a part of the same transaction where the bank received to itself trust funds and partook of the same color and character.

On the other hand, as here, where the trustee paid his debt to the bank from his personal account, where, according to a method of tracing, it might be found that some of the funds received by the bank were trust funds, and the bank by indirection received a part of the trust funds, would that establish knowledge on the part of the bank? We think not, especially under the circumstances here, where the deposits to Peckham's account of trust funds were comparatively small in relation to his total deposits during the period of time.

Over this period Peckham had deposited to his personal account a total of $1,600,000. Valuable royalties retained by the Royalty Company had been paid for by him and reimbursed to him by the Company, about which

there is no complaint. The amount of funds traceable to the Bank during this seven-year period in payment of Peckham's individual indebtedness is insignificant compared with the total items involved.

Wallace, the Royalty Company's auditor, by using salary checks and other items, about which there is no substantial dispute as to their rightness, arrives at a total of $10,713. (R. 2945.) Lambert arrives at the sum of $1,807.11, the first item of which was January 19, 1927. (R. 1443; Plaintiff's Exhibit 211.)

The Supreme Court of Texas does not and cannot lay a yardstick as a measure to determine the bad faith or guilty knowledge of the banker. The law is not static. It must adjust itself under established principles of liability to the varying facts of each case.

This is the decision in the *Q. A. & P. Ry.* case on rehearing.

There is a well-recognized, different rule as to a bank's liability to restore trust funds received in payment of a trustee's individual liability. In such a case the bank is put upon inquiry before it receives to itself monies belonging to another. *Steere v. Stockyards National Bank*, 113 Texas 387; *Union Stockyards National Bank v. Gillespie*, 137 U. S. 411, 34 L. Ed. 724.

This rule should have no application where payments are made to third parties. The reason for the rule that a bank must restore the funds received from a trustee or agent that belong to another is a rule of fundamental justice that the bank has no equity superior to the true owner.

THE TEST OF GOOD FAITH IS STATUTORY IN TEXAS

Art. 7425b, Texas Civil Statutes, provides:

> "Whenever one shall actually and in good faith pay a sum of money to a trustee, which the trustee is authorized to receive, he shall not be responsible for the proper application of the money, according to the trust; and any right or title derived from the trustee in consideration of such payment shall not be impeached or called in question in consequence of a misapplication by the trustee of the money so paid."

In the first decision of the case of *Quanah, Acme & Pacific Railway Company v. Wichita State Bank & Trust Company*, 89 S. W. (2d) 390, a distinction was made in the payment by a bank over the counter to a fiduciary on his check and the deposit of the funds to his individual credit. This distinction was followed in the *Royalty Company* decision, 89 S. W. (2d) 398, but the Supreme Court of Texas on rehearing in the *Quanah, Acme & Pacific Railway Company* case disregarded this distinction:

> "As appears from the petition, this Bank did not pay actual cash money for these bills at the time it purchased them from Hawkins. It did, however, pay the equivalent of money, because each time it purchased a bill it passed the proceeds thereof in full to Hawkins' individual credit on the books of the Bank." (127 Texas 414.)

When the Bank deposited to Peckham the proceeds of the several checks, under the rule in the *Quanah, Acme & Pacific case*, it purchased these checks and became the owner thereof. Thus i actually paid the various sums of

money to a trustee. Peckham, as such trustee, had the power and authority to receive these funds and, under the plain wording of the above statute, the test is good faith instead of constructive notice.

NATIONAL LAW SHOULD CONTROL

This Court has held that no State—at least through statute—may so change the contract of a national bank arising out of a deposit as to conflict with the general purpose of the national banking system. (See *First Nat. Bank v. California*, 262 U. S. 366, 67 L. Ed. 1030, and cases there cited.)

The crippling effect upon uniformity of the duties arising from deposits made in national banks may be just as effective when the encumbrance is due to a view of the general law as when it is due to the enactment of a statute. The philosophy underlying the rule of *Erie Railroad Company v. Tompkins*, *supra*, is that there should be uniformity in each state in the administration of general law, whether the cause be in the State or Federal Court. In respect to the duties of the national agencies, such as national banks, the law should be as nearly uniform as possible throughout the national system. Compare *Lyeth v. Hoey*, decided December 5, 1938. And as to national banks, their primary duties are those incident to the receipt and payment of deposits. It is believed that if the state decision here, as construed by the petitioners, be given effect, an affirmative duty of supervision (as opposed to a negative duty of non-participation), in the nature of a contractual duty, will be added to the duty ordinarily incident to the receipt of a deposit by a national bank in Texas.

A Federal charter, of course, does not license any banker, or bank, to become a party to a defalcation by any person, violative of any fiduciary relation (whether as executor, guardian, agent, partner, corporate officer or trustee) when with *actual knowledge* of intended defalcation a payment be made to the fiduciary. (Remembering that action with sufficient notice to amount to bad faith is equivalent to knowledge.) But, as pointed out in *Childs v. Empire Trust Company*, 54 Fed. (2d) 981 (C. C. A. 2), "It would be impossible to do business with a fiduciary at all if a bank were required to follow the cross entries between his several accounts; to decide whether he was thieving and then honor his checks."

The petitioners state "the Supreme Court of Texas bottomed the liability of the bank on constructive notice visited upon it." (Brief, p. 17.)

The so-called *constructive notice* consisted of this: There were two accounts in the City National Bank,—one an account in the name of Wichita Royalty Company accompanied by a contract of deposit to recognize a check drawn on this account by Peckham. That was the very undertaking agreed to be performed by the contract of deposit. There was also an account in the name of Peckham as an individual. In October, we will say, Peckham drew a check on the Royalty Company account, took this to a receiving and paying teller and deposited the same to his individual account. At the end of October, and of each succeeding month up to the time hereinafter mentioned, both the Royalty Company and Peckham were sent statements with the checks accompanying. Some four or five months later Peckham went either to an of-

ficer or to the note teller of the bank and tendered a check drawn on his individual account in payment of a note due by him as an individual to the bank. The check was accepted. (Consider *Harvard Law Review, Vol.* 34, *p.* 480.)

According to the petitioners, when the original deposit of $1,000.00 was made in the personal account by check drawn on the Royalty Company account, the bank was thereby put upon *knowledge* of the fact that the personal account was a "commingled account."

The Texas courts uniformly hold that there was no wrong committed in the act of permitting this deposit; hence it seems wholly illogical and improper to treat the personal account thereafter as a "commingled" account merely because there was a deposit lawful (from the standpoint of the bank) of money drawn from the Royalty Company's account and deposited into the personal account. It seems to us to be erroneous to say that there was a "commingled" account (from the standpoint of the bank) when the bank had a right to assume that the money drawn from the royalty account ceased to be royalty money and became personal money. (On this question see *Maryland Casualty Company v. City National Bank*, 29 Fed. (2d) 662.)

In the case of *Bischoff v. Yorkville Bank*, 218 N. Y. 106, 112 N. E. 759, the New York Court held that the form of the check, in connection with the surrounding circumstances, negatived the idea that the deposit of the check drawn on the account of the executor was intended to vest title into the executor as an individual. As executor's powers are, of course, so limited that one who

runs may know them. The circumstances here are such as to negative the notion that the deposit of a check drawn on the Royalty Company account into the personal accounty of Peckham was not such as to change the character of ownership. These checks were in voucher form. They evidenced expenditures. While the voucher did not accompany the deposits, still, if the bank was called upon to inquire into the vouchers (as petitioners claim), the vouchers would have shown them to have been intended to cover expenditures on behalf of the Trust. A bank is not called upon to go beyond its own channels, *M. & P. Bank v. Clifton*, 33 S. E. 750.

There was nothing to indicate an intention that the money should remain that of the Trust.

Pursuing the illustration further: Although there were innumerable receipts of deposits and checks drawn between the deposit in October and the note payment four or five months later, the petitioners say that the Supreme Court of Texas held that when the bank accepted the payment from this so-called "commingled" account and if an accounting between Peckham and the Royalty Company had shown that the original deposit was wrongful and was still in the "commingled" account, and that any part of it was made upon the the $1,000.00 applied on the note, then the bank was liable to repay that portion so applied on the note. (We may grant the correctness of this for argument's sake on the theory that the bank having taken something on an existing indebtedness and not having changed its relation upon the appearance of things had no higher title than had the payor. See *Beaver Boards Company v. Imbrie & Company*, 287 Fed.

163; *Fulton National Bank v. Hosier*, 295 Fed. 611 (C. C. A.) and the quotation from *Shotwell v. Sioux Falls Savings Bank*, 34 South Dakota 109, set forth in the opinion of the Supreme Court of Texas on motion for rehearing in the case of *Steere v. Stockyards Nat. Bank*, 113 Texas 401.

The *duty* of non-participation is a negative duty. *Perry on Trusts, Sec.* 122, p. 177, 7th Ed.; *American Surety Company v. Waggoner Nat. Bank*, 83 Fed. (2d) 102 (C. C. A. writ denied).

The petitioners claim that the Supreme Court of Texas has held that from and after the acceptance of this payment, which payment thus consisted in part of money wrongfully coming from the Royalty Company account, then the bank has an *affirmative* duty of supervision, not only with respect to money that may be paid to the bank upon a present indebtedness, but also with respect to *every dollar* deposited in the Royalty Company's account and drawn out of the Royalty Company's account. The theory of this supervision proceeds, it is said, from the constructive notice (not knowledge) visited upon the bank because of the duty to return a portion of the $1,000.00 so paid on the indebtedness, in that the bank is thus charged to know that the fiduciary had become unfaithful, that he cannot be relied upon and that he must be watched not only for defalcation, but he must be watched to see that his conduct is not violative of any instructions given by his principal, and that he acts strictly intra vires. (In this latter respect, if the petitioners correctly construe the opinion, the Supreme Court of Texas has gone beyond the case of *Bischoff v. Yorkville Bank*, 218 N. Y. 106, 112 N. E. 759, where the bank was held to be liable for

additional defalcation and not for investments merely beyond the scope of the authority.)

The duties which a national bank owes as an incident to deposits must be viewed from a practical standpoint. Banking transactions must be made with haste; they must be based upon a reposing of confidence. It is violative of all notions that a bank should undertake any duty of supervision until, as was early held, the transaction is one "designed and stipulated for" the benefit of the bank. *Gray v. Johnston*, L. R. 3, Eng. & Irish Appeal Cases 1; *New Amsterdam Casualty Co. v. Banking Company*, 175 Atl. 609, 117 N. J. E. 264. How is it possible for a national bank to function (if they must keep up with one fiduciary account, they must keep up with all) so as to be in a position to audit the books of fiduciaries in respect to transactions in the past to determine the honesty or dishonesty of a given payment from out of a personal account merely because previously thereto there has been money, presumably properly disbursed, deposited from a fiduciary account into the personal account?

We do not believe the Supreme Court of Texas so held finally; but we submit that, if so, there have been placed affirmative duties of supervision in the nature of contracts incident to the contract of deposits which so cripple and encumber the functions of the national bank as to be violative of the federal functions of the national banks. The national banks now constitute a system. They are interdependent. They are affected by the Federal Deposit Insurance. When in liquidation, they are under Federal supervision. Depositors as such should not be called upon to share with creditors whose claims are

based in substance upon a relation of suretyship undertaken by a national bank,—an affirmative duty of supervision, otherwise of liability. A national bank may not ordinarily become a surety, a guarantor or an indemnitor. What happens to one national bank affects the others. The idea is one of uniformity. The law to be applied here should be the Federal conception of duties and not those of the several states.

While Congress, in authorizing national banks to receive deposits, did not expressly define the relations that would arise therefrom, it evidently had in mind some relationship to be uniform throughout the country. It did not have in mind necessarily any duty of supervision on some theory of constructive notice, first established in the case of Bischoff v. Yorkville Bank in the year 1916 in New York, largely repudiated elsewhere, *Maryland Casualty Co. v. Bank*, 29 Fed. (2d) 662; *New Amsterdam Casualty Co. v. National Bank*, 175 Alt. 617, 117 N. J. E. 264, expressly legislated against in Uniform Fiduciaries Act. See reporter's notes quoted under Section 905 of *Bogert on Trusts and Trustees*. That act makes bad faith "the subjective test of honesty and not the objective test of care.")

At any rate, the added duty here is such as to be inconsistent with the general national system and should be rejected.

If the national banks are under the affirmative duty here said to be placed upon them, they cannot handle with safety any agency or fiduciary account and at the same time lend money to any agent or fiduciary. There is no practical way for a bank to trace deposits, so as to know that an agent who has theretofore taken money from his

agency account and put it into his personal account, and later pays his personal debts with this money. Furthermore, there is no pay incident to this service. (See statement of the Supreme Court of Minnesota as to this, *Rodgers v. Bankers' Nat. Bank*, 229 N. W. 90, 93-94; 179 Minn. 197.)

The bank may be called upon to return the money so received simply because it has no equity higher than that of its rightful owner, but this should be the complete measure of the duty. In the *Rodgers Case, supra*, it is true that the bank received no payment on personal indebtedness, but in the case at Bar the bank did not knowingly receive a payment on a personal debt. Receiving a benefit may be evidence of knowledge. But an inadvertent benefit, though it ought to be returned because unaccompanied by an equity, is not knowledge or evidence thereof or of bad faith. The very word participation implies one or the other. Knowledge involves "consciousness, i. e. presence in the mind of a given fact." *Wigmore on Evidence, Sec.* 244. There was no way for the Bank to be conscious of it here. They could have refused to have done business at all, but that would put an end to the functions of national banks. (See the *Rodgers Case, supra*, p. 93.) Instances in the conduct of banks must multiply themselves by the thousands where deposits are made in personal accounts of moneys formerly agency in nature. Must each of these be supervised?

All of which leads to the very point we make now that the definition of the duty of a national bank in Texas under this decision as construed by petitioners, is so onerous as to cripple the national banking system and to be rejected.

It is pointed out, however, that certain of the checks were made payable to the bank and *Robbins v. Passaic Nat. Bank*, 109 N. J. Law 250, 82 A. L. R. 1368, is cited to fix liability on these checks. But, as stated, banking law is based upon practical considerations. The checks drawn payable to the Bank were not intended to be credited to the Royalty Company account, for that would have been an useless proceeding. Inquiry must be made of some one as to what should be done with the funds. In the *Robbins Case* there was a principal from whom inquiry could be made. In the case at Bar, there was no one to inquire of save Scannell, who signed most of the checks, or Peckham, who cashed them. There were 1,200 or 1,300 shareholders, no one of whom lived in Texas, scattered to the four corners of the Globe, whose addresses are unknown even now. Inquiry could not be made of them. But, if it could be made of them, of how many must it be made when there is nothing in the declaration of trust making the voice of a majority, or any number, controlling on all? There was nothing to do save either to quit functioning as a national bank or to take the word of Peckham, who was recognized by all to be an honest man and held out by the stockholders as entrusted with all the authority. See the discussion of this question in the *Rodgers Case*, p. 93.)

Besides, the practice of making checks payable to the payee bank for general disbursements was one adopted by Scannell, used prior to the time Peckham ever became trustee. (R. 1465.)

Certainly, further, a bank should not be called upon to know that checks drawn by one authorized to do so and

ostensibly for corporate purposes are violative of instruction (instance an investment in Marlborough property). The ultimate destination of the money can be of no such concern to a paying bank to require it to know that the expenditure is authorized.

The Circuit Court of Appeals stated that the sale of the assets of the Old Bank to the New Bank should stand. Such was a matter not under consideration at all by the Supreme Court of Texas. No attack is made upon that holding in the assignments of error filed here and it should not be questioned.

The case of *Hill v. Wiley*, 3 N. E. (2d) 1015 (petitioner's brief, p. 18), has no application here. That case, and the cases cited, involved situations where notice was brought home to the trust estate receiving the benefit of the stolen money. The case also proceeds upon the doctrine of unjust enrichment. Harrell had no actual notice that Peckham was using trust money in the Marlborough venture, in the first place. But in the second place, and as conclusive of any liability upon the doctrine of unjust enrichment, the rule is well established that a partner, or a co-owner, cannot be held to have been unjustly enriched by contributions to the common estate from out of stolen money, when he himself advances his proportion of the money to the common estate. In such situation he is akin to a purchaser for value and cannot be said to be unjustly enriched, having parted with his own capital on the strength of the appearance of the regularity of the contribution by his partner or co-owner. (See *Gilruth v. Decell*, 16 So. 251; *Englar v. Offutt*, 70 Md. 78, 14 Am. St. Rep. 332; *Dounce v. Parsons*, 45 N. Y. 180.)

DO NOT THE FINDINGS OF THE TRIAL COURT REQUIRE AN AFFIRMANCE?

The petitioner contends that the Bank is conclusively charged with Peckham's fraud when it had received by indirection trust funds on the trustee's individual debt, and that thereafter it was liable for all unauthorized deposits made to the individual account of the trustee from the deposit of trust funds.

The Royalty Company unquestionably owed the Bank a note of $22,000, which represented the balance of two loans,—one of $15,000 and the other of $25,000. Peckham, Trustee, had authority to borrow money and negotiate both of these loans, the proceeds of which was deposited in the account of the Wichita Royalty Company and expended by Peckham, or under his direction. (R. 458, 459.)

A portion of this money was used to purchase the Stephens Royalty and a portion to purchase the Marlborough Addition.

The evidence is undisputed that the bank had no knowledge of the purpose of such loans and the present note of $22,000 represents the balance unpaid.

The Bank was under no duty to look to the proper application of this money. *Texas Statutes, Art.* 7425b; *Bogert on Trusts and Trustees, Vol.* 4, *Sec.* 767; *Jenson v. Toltec Ranch Co.*, 174 Fed. 86.

There is a conflict in the testimony between the Bank's auditors, Carson and Lambert, on the one hand, and the Royalty Company's auditor, Wallace, on the other,

as to when by the method of tracing employed the Bank first received on Peckham's debt trust funds. The result of Lambert's audit shows that the first funds traceable to the Bank, belonging to the Royalty Company, from Peckham's individual account and applied upon Peckham's individual note, was made on January 19, 1927. (Plaintiff's Exhibit 211, R. 1443; also see Plaintiff's Exhibit 210a.)

Lambert testified that on this date Peckham paid the City National Bank the sum of $2,506 by check upon his personal account; that under the Minimum Balance Rule $1,581.41 was from personal funds and $924.81 was funds from the Royalty Company account. He says:

> "That is the first time that the transferred funds under the minimum balance rule was used to pay any part of his personal indebtedness." (R. 1399.)

Carson's testimony, which goes into great detail, corroborates Lambert's. (R. 815-967.)

Wallace's testimony on this question is summarized at page 1704 of the Record. Wallace spent only a short time, as pointed out by the Court. He admits that the Royalty Company's attorney and Scannell helped write his report. (R. 1737.)

The first item in his report, wherein he traces the sum of $390.86, the payment of Peckham's note from the transfer of royalties, is from a royalty purchased by Peckham known as the "Grimshaw," wherein Peckham paid out of his own pocket for this royalty and was reimbursed. This royalty has been retained over fifteen years by the Royalty Company and is still producing, and at the trial

had netted the Royalty Company $8,596. (R. 810.) Wallace says, concerning this item, as follows:

> "The first one I deal with is the Grimshaw, purchased during the early administration by George Peckham, February 12, 1923, is the conveyance to Peckham from Grimshaw. That royalty is repudiated. We have charged Peckham with what he transferred out of the trust funds for the Grimshaw royalty. I have not given Peckham credit for what the Grimshaw royalty cost Peckham when Peckham bought it, I charged it to him—the cost of the Grimshaw royalty of $7,500.00. I have not allowed him any credit for it. Peckham had paid $7,500.00 for the Grimshaw royalty and the Wichita Royalty Company paid Peckham $7,500.00 for it, and if the Grimshaw royalty had not produced a barrel of oil, I would have Peckham owing the Wichita Royalty Company, $7,500.00 under my statement. * * * The Royalty Company, during the lifetime of the royalty, regarded it as their property and received their part of the oil runs, which was considerably more than the original cost." (R. 1741.)

The next item of $279 came out of a salary check. The item dated 2-5-24 of $67.67 was from funds reimbursing Peckham for the purchase of the Wilson royalty. The item of 3-18-24 of $5,500, Check No. 185, was a check payable to B. L. Fain and not to Peckham. The next item of $1,386.92 was from a purchase direct to the Royalty Company of what is known as the Routon Royalty. There was nothing wrong with that transaction. (R. 1751-1753.) The next item is from a salary check. The next item of $10, as well as the one of May 9, 1927, of $10, are extraordinary items. They represent the payment by Peckham to the bank for a safety deposit box, wherein he

drew a personal check of $10 in each instance to pay this rent.

Thus, briefly, is shown the manner of Wallace's investigation.

Under this state of facts the Court found in favor of Carson's and Lambert's testimony. (R. 1928.)

All of the checks deposited to Peckham's individual account from the account of the Royalty Company from and after the 1-19-27 do not aggregate the amount of the plaintiff bank's debt.

With respect to an item of $2,550, which petitioner (p. 5 of its brief) claims that the District Court found as a fact that the Bank had received, this is an entire error on the part of the petitioner in respect to an accurate knowledge of this transaction.

The trial court says in respect to this item:

> "Another item of approximately $2,550.00 is also claimed. * * * I have been doubtful about the $2,550.00. When one is doubtful, and as doubtful as the maze of facts in this case causes, I believe the trust should be given the benefit of it in so far as it concerns a payment out of funds to the depository bank by the trustee on his own debt." (R. 1928.)

The court, as well as the petitioner, wholly misconceives this item and the nature if it, from the undisputed testimony.

This transaction was Defendant's Exhibit 155, R, 1238, a check for the Curlee lands. W. S. Curlee con-

veyed to J. T. Harrell and G. W. Peckham on this date a tract of land adjacent to the City of Wichita Falls for a consideration of $4,814 in cash and the assumption of certain note indebtedness. The deed is shown Defendant's Exhibit 14, R. 483. The proceeds of that check were deposited to the credit of W. S. Curlee. (R. 571.) The Bank received none of the proceeds thereof and the check did not create an overdraft. (R. 582.) Peckham's balance after the payment of this check was $4,888.30.

The following is an analysis of these transfers and the corresponding record and exhibit thereon:

Analysis of all checks payable to City National Bank and deposited to credit of G. W. Peckham's Personal Account January 19, 1927, to time of Peckham's death.

Date	Check No.	(Defendant Exhibit "6" R. 1801) Amount	Purpose Per Voucher Notation		Applied by Peckham To Trust	Date Applied	
1-19-27	571	2,000.00	Marlborough	R 1399 Lambert R-1455	None		Plaintiff Exhibit 212—R 1487
2-19-27	579	2,500.00	Marlborough	R 1455 Lambert	None		Plaintiff Exhibit 212—R 1487
3- 1-27	582	500.00	Bank Note	R 1456 Lambert	500.00	12- 8-26	Plaintiff Exhibit 212—R 1488
3-23-27	591	2,000.00	Bank Note	R 1458 Lambert	None		
6-18-27	620	1,200.00	Bank Note	R 1459 Lambert	1,200.00	8-31-27 10-19-27	Plaintiff Exhibit 212—R 1489 Plaintiff Exhibit 212—R 1491
8-16-27	635	1,500.00	Bank Note	R 1459 Lambert	1,500.00	10-19-27 11-25-27	Plaintiff Exhibit 212—R 1491 Plaintiff Exhibit 212—R 1491
10-14-27	650	2,400.00	Bank Note	R 1459 Lambert	2,400.00	11-25-27 2-15-28	Plaintiff Exhibit 212—R 1491 Plaintiff Exhibit 212—R 1491
11-25-27	657	1,800.00	Bank Note	R 1459 Lambert	1,721.33	2-15-28	Plaintiff Exhibit 212—R 1491
4- 6-28	702	548.12	Expense Refund		548.12		
11-20-28	710	1,850.00	Bank Note	R 1459 Lambert	None		Plaintiff Exhibit 212—R 1491
9-27-28	752	424.66	Bank Note	R 1459 Lambert	424.66	9-27-28	Plaintiff Exhibit 212—R 1491
TOTALS		16,722.78			8,294.11		

RATIFICATION AND ELECTION

When Peckham died, Scannell made an audit and arrived at an indebtedness of approximately $19,000 claimed to be owing by Peckham to the Trust (R. 806, 807). He elected to accept Marlborough, informed Harrell of the Royalty Company's ownership, and asserted ownership and control over these properties. At that time the Marlborough properties, adjacent to the principal residential section of the fast-growing city of Wichita Falls, was a valuable property. (R. 457.) After the depression came along, Scannell repudiated the ownership. Most of the royalties complained of now have been held by Scannell, as trustee, over a period of from five to nine years. The Stephens Royalty, which is complained of, was sold by Scannell and the proceeds applied upon the note indebtedness. It is apparent that Scannell, at the time he elected to receive the Marlborough, he did so for the purpose of saving the Trust's money invested in that enterprise. (R. 1278, 790.) Each and every transaction complained of in respect to the acquisition of royalties, as well as the Marlborough Addition, was fully disclosed by the books and records of the Royalty Company. The acquisition of the royalties were shown to have been reported to the stockholders. The report to the stockholders, which, in the nature of things, should have been made after the acquisition of Marlborough, was missing and unaccounted for (R. 1925). Scannell knew all the facts all the time with reference to the handling of the funds. He initiated and instituted the plan of making checks for disbursements payable to the Bank. (R. 1465.) He knew what every check was for and signed most of them, re-

ceived income from the royalties which he now repudiates and appropriated them to the use of the Royalty Company. He entered into the active management of the Marlborough properties, accepted and received the stock of the corporation, and elected to hold the properties.

We submit that his election is irrevocable and that the case should be decided against the Royalty Company on its entire cross action on the ground of ratification and election. It has been held by the Supreme Court of Texas that a trustee, such as Scannell was, is the alter ego of the company. (*S. C. Tyrell Trust v. Lovell*, ____ Texas____, 27 S. W. (2d) 142.

But it is contended that since there was no power in Peckham to make an investment in the town-lot proposition, there was no power in Scannell to ratify such. Peckham was making an original investment. Scannell was faced with the necessity of having an accounting in the estate of Peckham. When Peckham died, an accounting was essential. Under the laws of Texas, claims against his estate must be filed within twelve months from administration; otherwise deferred. (Revised Statutes of Texas (1925), Art. 3509.)

Some one must act for the Royalty Company in respect to this accounting. The substitute trustee was the only one authorized to do so. All title was in him. Certainly the substitute trustee was not powerless to protect the estate by retaining the Marlborough property, rather than permitting it to be treated as a part of the estate of Peckham to be shared in by all of his creditors. His power, as Judge Sibley points out, is akin to the power of a national bank in emergencies. He became an agent

by way of necessity to deal with the alleged wrong of Peckham, according to his best judgment.

Therefore, inasmuch as this case is a writ of certiorari to review the judgment of the Circuit Court of Appeals, the entire record is before the Supreme Court and it has power to review the action of the Circuit Court of Appeals and direct such disposition of the case as that court might have made of it upon the appeal from the District Court. *Story Parchment Co. v. Paterson Parchment Paper Co.*, 282 U. S. 555, 75 L. Ed. 544.

The transactions in this case involve hundreds of items, running over a period of seven years.

Sudden death has called Peckham from the stage and the Chancellor, in reviewing this record of the past, says:

> "The Court has been unable to find any dishonest transaction by the trustee, Peckham."

and is not this statement justified by the charities of the law, which says:

> "But where there has been a change of circumstances with reference to the parties and the property, and still more where death has intervened, so that the mouth of one party is closed and those who represent his interests are not in a predicament to avail of the explanations which he might have made, out of the charities of the law and in consideration of the fact that fraud is never to be presumed, but must always be proved and proved clearly, the courts limit very much, in such cases, the measure of time within which they will grant relief, because the pre-

sumption comes in aid of the dead man, that he has gone to his account with a clear conscience."

To end this litigation, we pray that the judgment of the trial court be affirmed.

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Of Counsel.

ADDENDUM

The following tabulation reflects each and all of the checks complained of by the Wichita Royalty Company and listed in paragraph 17 of its amended cross complaint (R. 197-200), same being all of the Wichita Royalty Company's complaint set forth in its entire amended cross action. (R. 190-231.)

In this tabulation each check is listed in the same manner as in the cross complaint, together with the number, the date, the amount, the payee, and the purposes for which said checks were given, and are shown in the first five columns of the tabulation below and opposite each check is reflected the evidence pertaining thereto of the respective witnesses, Lambert, Harrell, Carson, and other witnesses, including the witness Wallace, auditor for the Royalty Company, followed also by witness Scannell and exhibits pertaining to each of said checks.

The evidence referred to shows that each and every check was represented by a voucher, retained in the office of the Wichita Royalty Company, and the proceeds of each check was used for the very purpose stated in the voucher retained in the office of the Royalty Company, except:

Check No.	*Date*	*Amount*	*Evidence*
571	1-19-27	$2,000.00	R. 1455, 1456
579	2-19-27	2,500.00	R. 1455, 1456
591	3-23-27	2,000.00	R. 1458
Sale price of Wilson and Vaughn Royalties		11,400.00	R. 1461,1462,914-916
Deficit of Payments on Notes to the Bank		1,929.67	R. 1460, 893-896
Total Funds Unaccounted for		19,829.67	R. 1504, 807

(Note: The proceeds of the sale of the Wilson and Vaughn Royalties were never deposited in the account of the Wichita Royalty Company, R. 1461, 1462, 914-917.)

This sum of $19,829.67 corresponds, with the exception as to one dollar difference, with the claim that E. E. Scannell filed with the administrator in December, 1930. (R. 807.)

ITEMS COMPLAINED OF (R-190-231)

Paragraph XVII. (R-197-200)

Check No.	Date	Amount	Payee	Purpose	EVIDENCE — TESTIMONY: Lambert	Harrell	Carson	Miscellaneous	Scannell
								R-1739-40	R-1156-61
427	10- 8-25	$5,500.00	Bank	To Purchase Royalties	R-1445; R-1480		R-566-70; 817-22	R-1283-5	R-722-3; 792-4; 799
451	12-28-25	1,250.00	Bank	To Purchase Royalties	R-1446; R-1480-1	R-1273	R-570-1; 823-4-32	R-1743	R-723-4; 1163-75
452	1- 4-26	5,000.00	Bank	To Purchase Royalties	R-1447-8-9	R-450-1; 1264-73	R-571; 481; 483; 832-6		R-1175-80
458	1-11-26	5,000.00	Bank	To Purchase Royalties	R-1447-8-9	R-450-1; 1293-6	R-571; 481; 483; 832-6		
461	3- 6-26	15,769.07	Bank	To Purchase Royalties	R-1447-8-9	R-450-1298	R-571; 481; 483; 832-6		
478	3- 6-26	17,623.70	Bank	To Purchase Marlborough	R-1449-50; 1552	R-1275-8	R-840-7		R-693-4; 732-45
479	3- 6-26	6,000.00	Security National Bank	To Purchase Marlborough	R-1449-50		R-841; 853		R-693-4; 786-89
481	3-31-26	7,500.00	Bank	To Purchase Marlborough	R-1450		R-854-5		R-695; 803
497	3-23-26	300.00	Bank	Interest on Note at Bank	R-1450		R-857		
503	5-20-26	3,000.00	Peckham	Marlborough Improvements	R-1450-1		R-857-60		R-695
506	5-29-26	500.00	Bank	Interest on Note at Bank	R-1451		R-862		
507	5-29-26	1,500.00	Bank	Marlborough Improvement	R-1450-1		R-857-60		R-695
510	6-16-26	4,500.00	Bank	Marlborough Improvement	R-1450-1		R-857-60		R-695
519	7-13-26	1,000.00	Bank	Marlborough Improvement	R-1450-1		R-857-60		R-695
521	7-16-26	300.00	Bank	Interest on Note at Bank	R-1452		R-862-3		
525	8- 2-26	4,000.00	Bank	To Pay Highland Note	R-1452-3		R-863-4	R-1749	R-695
531	8-27-26	500.00	Bank	Interest on Note at Bank	R-1453-4		R-870		
532	8-27-26	4,357.58	Bank	To Pay Highland Note	R-1452-3		R-863-4	R-1749	R-695-6
540	10-13-26	300.00	Bank	Interest on Note at Bank	R-1453		R-871		
550	11-20-26	7,500.00	Bank	To Purchase Royalties	R-1456-7-8		R-871-2-8		R-724-5-6
554	12- 2-26	1,500.00	Bank	To Purchase Royalties	R-1456-7-8		R-871-2-8		R-723-4-6-7
556	12-26-26	700.00	Peckham	To Pay Highland Note	R-1452-3		R-863-4	R-1749	R-696
556-A	12-22-26	538.16	Peckham	To Pay Highland Note	R-1452-3		R-863-4	R-1749	R-696
557	12- 7-26	1,920.00	Bank	To Pay Draft for Royalties	R-1454-5		R-527-533; 879	R-1743	R-727
569	1-11-27	300.00	Bank	Interest on Note at Bank	R-1455		R-880		
571	1-19-27	2,000.00	Bank	Marlborough Improvements	R-1455-6		R-880-1		R-686-696
579	2-19-27	2,900.00	Bank	Marlborough Improvements	R-1455-6		R-880-1		R-686-696
582	3- 1-27	500.00	Bank	Interest on Note at Bank	R-1456		R-882-3		
583	3- 1-27	301.82	Bank	To Purchase Royalties	R-1456-7-8		R-872-8		R-726
584	3- 1-27	500.00	Bank	Interest on Note at Bank	R-1456		R-887		
591	3-23-27	2,000.00	Bank	To Purchase Royalties	R-1458		R-888		R-686
599	4-14-27	300.00	Bank	Interest on Note at Bank	R-1458		R-889		
615	6- 8-27	500.00	Bank	Interest on Note at Bank	R-1458-9		R-889		
620	6-18-27	1,200.00	Bank	To Pay Note at Bank	R-1459-60-1		R-889-93; 896		R-686
628	7-16-27	1,500.00	Bank	Note at Bank	R-1459		R-899-900		
635	8-16-27	1,500.00	Bank	Note at Bank	R-1459-60-1		R-889-93; 896		R-686
650	10-14-27	2,400.00	Bank	Note at Bank	R-1459-60-1		R-890-3; 896		R-686
657	11-25-27	1,800.00	Bank	Note at Bank	R-1459-60-1		R-890-3; 896		R-686
682	1-18-28	2,000.00	Bank	Note at Bank	R-1461		R-900		
710	4-20-28	1,850.00	Bank	Note at Bank	R-1459-60-1		R-890-3; 896		R-686
717	5-17-28	220.00	Bank	Interest on Note at Bank	R-1461		R-901		
721	6- 1-28	424.66	Bank	Interest on Note at Bank	R-1461		R-901-2		
733	7-23-28	220.00	Bank	Interest on Note at Bank	R-1461		R-902-3		
752	9-27-28	424.66	Bank	Interest on Note at Bank	R-1459-60-1		R-890-3; 896		
768	12- 4-28	2,000.00	Bank	To Pay Note at Bank	R-1461		R-903		
791	2-19 29	1,500.00	Bank	To Pay Note at Bank	R-1461		R-903-4		
814	6- 7-29	1,500.00	Bank	To Pay Note at Bank	R-1461		R-904		
824	7-15-29	212.49	Bank	To Pay Interest on Bank Note	R-1461		R-905		
836	8-30-29	1,000.00	Bank	To Pay Note at Bank	R-1461		R-905-6		
856	11-23-29	1,500.00	Bank	To Pay Note at Bank	R-1461		R-905-7		
880	1-24-30	1,500.00	Marlborough	To Repay Loan	R-1462-3		R-907-8		R-696-7
890	2-24-30	1,000.00	Bank	To Pay Note at Bank	R-1462-3		R-908		
898	4-10-30	1,000.00	Bank	To Pay Note at Bank	R-1462-3		R-910-11		
908	5-13-30	500.00	Texas Inv. Co.	To Pay Marlborough Note	R-1462-3		R-911-12		R-697
920	6-14-30	1,500.00	Bank	To Pay Note at Bank	R-1462-3		R-912-13		
930	7-14-30	3,055.42	Bank	To Pay Note at Bank	R-1462-3		R-913-14		

Paragraph XVIII. (R-201)

Sale of Two Royalties for $12,048.00, which was misappropriated by Peckham with the knowledge of the Bank — R-1461-2; R-914-5-6-7; R-920-4; R-1750-1

Paragraph XIX. (R-201)

That Peckham used trust funds, with the knowledge of the Bank, with which to pay $57,764.21 of personal obligations to the Bank — R-1378-9; R-1399; 1404-6; R-1424-6; 1440-1; R-1476; 1442-3; 1504; R-925-6; R-1746-8-9-50

Paragraph LIV. (R-219-20-21-22)

That the acquisition of the Grimshaw Royalty was a wrongful purchase — R-1466-7; 1545-6; R-928-31; 933; R-1741; 1746; R-699-704

S COMPLAINED OF (R-190-231)

aragraph XVII. (R.-197-200)

ount	Payee	Purpose	Lambert	Harrell	Carson	Miscellaneous	Scannell	Exhibits
						EVIDENCE — TESTIMONY		
0.00	Bank	To Purchase Royalties	1445; R-1480		R-566-70; 817-22	R-1739-40	R-1156-61	
0.00	Bank	To Purchase Royalties	1446; R-1480-1	R-1273	R-570-1;823-4-32	R-1283-5	R-722-3; 792-4; 799	R-818-20-22
.00	Bank	To Purchase Royalties	1447-8-9	R-450-1; 1264-73	R-571; 481; 483; 832-6	R-1743	R-723-4; 1163-75	R-824-5
.00	Bank	To Purchase Royalties	1447-8-9	R-450-1; 1293-6	R-571; 481; 483; 832-6		R-1175-80	R-451; 1797; 835-7
.07	Bank	To Purchase Royalties	1447-8-9	R-450-1298	R-571; 481; 483; 832-6			R-451; 1797; 835-7
.70	Bank	To Purchase Marlborough	1449-50; 1552	R-1275-8	R-840-7		R-693-4; 732-45	R-451; 1797; 835-7
.00	Security National Bank	To Purchase Marlborough	1449-50		R-841; 853		R-693-4; 786-89	R-733; 738-43
.00	Bank	To Purchase Marlborough	1450		R-854-5		R-695; 803	R-785; 842; 845
.00	Bank	Interest on Note at Bank	1450		R-857			
.00	Peckham	Marlborough Improvements	1450-1		R-857-60		R-695	
.00	Bank	Interest on Note at Bank	1451		R-862			
00	Bank	Marlborough Improvement	1450-1		R-857-60		R-695	
00	Bank	Marlborough Improvement	1450-1		R-857-60		R-695	
00	Bank	Interest on Note at Bank	1452		R-862-3			
00	Bank	To Pay Highland Note	1452-3		R-863-4	R-1749	R-695	R-865; 869
00	Bank	Interest on Note at Bank	1453-4		R-870			
58	Bank	To Pay Highland Note	1452-3		R-863-4	R-1749	R-695-6	R-865; 869
00	Bank	Interest on Note at Bank	1453		R-871			
00	Bank	To Purchase Royalties	1456-7-8		R-871-2-8		R-724-5-6	
00	Bank	To Purchase Royalties	1456-7-8		R-871-2-8		R-723-4-6-7	
00	Peckham	To Pay Highland Note	1452-3		R-863-4	R-1749	R-696	R-865; 869
16	Peckham	To Pay Highland Note	1452-3		R-863-4	R-1749	R-696	R-865; 869
00	Bank	To Pay Draft for Royalties	1454-5		R-527-533; 879	R-1743	R-727	
00	Bank	Interest on Note at Bank	1455		R-880			
00	Bank	Marlborough Improvements	1455-6		R-880-1		R-686-696	R-807; 881
00	Bank	Marlborough Improvements	1455-6		R-880-1		R-686-696	R-807; 881
00	Bank	Interest on Note at Bank	1456		R-882-3			
12	Bank	To Purchase Royalties	1456-7-8		R-872-8		R-726	
00	Bank	Interest on Note at Bank	1456		R-887			
00	Bank	To Purchase Royalties	1458		R-888		R-686	R-807
00	Bank	Interest on Note at Bank	1458		R-889			
00	Bank	Interest on Note at Bank	1458-9		R-889			
00	Bank	To Pay Note at Bank	1459-60-1		R-889-93; 896		R-686	R-807
00	Bank	Note at Bank	1459		R-899-900			
00	Bank	Note at Bank	1459-60-1		R-889-93; 896		R-686	R-807
00	Bank	Note at Bank	1459-60-1		R-890-3; 896		R-686	R-807
00	Bank	Note at Bank	1459-60-1		R-890-3; 896		R-686	R-807
00	Bank	Note at Bank	1461		R-900			
00	Bank	Note at Bank	1459-60-1		R-890-3; 896		R-686	R-807
00	Bank	Interest on Note at Bank	1461		R-901			
00	Bank	Interest on Note at Bank	1461		R-901-2			
00	Bank	Interest on Note at Bank	1461		R-902-3			
00	Bank	Interest on Note at Bank	1459-60-1		R-890-3; 896			
00	Bank	To Pay Note at Bank	1461		R-903			
00	Bank	To Pay Note at Bank	1461		R-903-4			
00	Bank	To Pay Note at Bank	1461		R-904			
00	Bank	To Pay Interest on Bank Note	1461		R-905			
00	Bank	To Pay Note at Bank	1461		R-905-6			
00	Bank	To Pay Note at Bank	1461		R-906-7			
00	Marlborough	To Repay Loan	1462-3		R-907-8		R-696-7	
00	Bank	To Pay Note at Bank	1462-3		R-908			
00	Bank	To Pay Note at Bank	1462-3		R-910-11			
00	Texas Inv. Co.	To Pay Marlborough Note	1462-3		R-911-12		R-697	
00	Bank	To Pay Note at Bank	1462-3		R-912-13			
00	Bank	To Pay Note at Bank	1462-3		R-913-14			

Paragraph XVIII. (R-201)

$12,048.00, which was misappropriated by Peckham with the
k — R-1461-2 — R-914-5-6-7; R-920-4 — R-1750-1 — R-807; 916

Paragraph XIX. (R-201)

R-1378-9; R-1399; 1404-6

funds, with the knowledge of the Bank, with which to pay
l obligations to the Bank — R-1424-6; 1440-1; R-1476; 1442-3; 1504 — R-925-6 — R-1746-8-9-50

aragraph LIV. (R-219-20-21-22)

Grimshaw Royalty was a wrongful purchase — R-1466-7; 1545-6 — R-928-31; 933 — R-1741; 1746 — R-699-704 — R-700-1

Paragraph LV. (R-222-23)

569	1-11-27	300.00	Bank	Interest on Note at Bank	1455
571	1-19-27	2,000.00	Bank	Marlborough Improvements	1455-6
579	2-19-27	2,500.00	Bank	Marlborough Improvements	1455-6
582	3- 1-27	900.00	Bank	Interest on Note at Bank	1456
583	3- 1-27	301.82	Bank	To Purchase Royalties	1456-7-8
584	3- 1-27	900.00	Bank	Interest on Note at Bank	1456
591	3-23-27	2,000.00	Bank	To Purchase Royalties	1458
599	4-14-27	300.00	Bank	Interest on Note at Bank	1458
615	6- 8-27	900.00	Bank	Interest on Note at Bank	1458-9
620	6-18-27	1,200.00	Bank	To Pay Note at Bank	1459-60-1
628	7-16-27	1,500.00	Bank	Note at Bank	1459
635	8-16-27	1,500.00	Bank	Note at Bank	1459-60-1
650	10-14-27	2,400.00	Bank	Note at Bank	1459-60-1
657	11-23-27	1,800.00	Bank	Note at Bank	1459-60-1
682	1-18-28	2,000.00	Bank	Note at Bank	1461
710	4-20-28	1,850.00	Bank	Note at Bank	1459-60-1
717	5-17-28	220.00	Bank	Interest on Note at Bank	1461
721	6- 1-28	424.66	Bank	Interest on Note at Bank	1461
733	7-23-28	220.00	Bank	Interest on Note at Bank	1461
752	9-27-28	424.66	Bank	Interest on Note at Bank	1459-60-1
768	12- 4-28	2,000.00	Bank	To Pay Note at Bank	1461
791	2-19-29	1,500.00	Bank	To Pay Note at Bank	1461
814	6- 7-29	1,500.00	Bank	To Pay Note at Bank	1461
824	7-15-29	212.49	Bank	To Pay Interest on Bank Note	1461
836	8-30-29	1,000.00	Bank	To Pay Note at Bank	1461
856	11-23-29	1,500.00	Bank	To Pay Note at Bank	1461
880	1-24-30	1,500.00	Marlborough	To Repay Loan	1462-3
890	2-24-30	1,000.00	Bank	To Pay Note at Bank	1462-3
898	4-10-30	1,000.00	Bank	To Pay Note at Bank	1462-3
908	5-13-30	500.00	Texas Inv. Co.	To Pay Marlborough Note	1462-3
920	6-14-30	1,500.00	Bank	To Pay Note at Bank	1462-3
930	7-14-30	3,055.42	Bank	To Pay Note at Bank	1462-3

Paragraph XVIII. (R-201)

Sale of Two Royalties for $12,048.00, which was misappropriated by Peckham with the knowledge of the Bank — R-1461-2

Paragraph XIX. (R-201)

That Peckham used trust funds, with the knowledge of the Bank, with which to pay $57,764.21 of personal obligations to the Bank — R-1378-9; R-1399; 1404-6; R-1424-6; 1440-1; R-1476; 1442-3; 1504

Paragraph LIV. (R-219-20-21-22)

That the acquisition of the Grimshaw Royalty was a wrongful purchase — R-1466-7; 1545-6

Paragraph LV. (R-222-23)

That the purchase of a company automobile was a wrongful transaction — R-1470

Paragraph LVI. (R-223-24)

That the purchase and sale of the Wilson Royalty was a wrongful series of transactions — R-1468-72; 1545-7

Paragraph LVII. (R-224)

That the purchase of the H. H. White lands was a wrongful transaction — R-1471; 1547-8

Paragraph LIX. (R-225)

That the acquisition of the Routon Royalty was a wrongful transaction — R-1472-3

Paragraph LXII. (R-226)

That the purchase of the Anderson and Vernon Royalties was a wrongful transaction — R-1473-5

Paragraph LXIX. (R-228)

That the purchase of the Milner Oil Payment was a wrongful transaction — R-1454; 1550

Paragraph LXXIV. (R-229)

That the acquisition of the Curtis Lane Royalty was a wrongful transaction — R-1472; 1548

Paragraph LXXV. (R-229-30)

That, over the period of his trusteeship, Peckham, with the knowledge of the Bank, diverted trust funds to the payment of his personal indebtedness to the Bank — R-1399; 1404-6; R-1424-6; 1440-1; R-1465; 1504

	R-527-533; 879	R-1743	R-727
	R-880		
	R-880-1		R-686-696
	R-880-1		R-686-696
	R-882-3		
	R-872-8		R-726
	R-887		
	R-888		R-686
	R-889		
	R-889		
	R-889-93; 896		R-686
	R-899-500		
	R-889-93; 896		R-686
	R-890-3; 896		R-686
	R-890-3; 896		R-686
	R-900		
	R-890-3; 896		R-686
	R-901		
	R-901-2		
	R-902-3		
	R-890-3; 896		
	R-903		
	R-903-4		
	R-904		
	R-905		
	R-905-6		
	R-906-7		
	R-907-8		R-696-7
	R-908		
	R-910-11		
	R-911-12		R-697
	R-912-13		
	R-913-14		
	R-914-5-6-7	R-1750-1	
	R-920-4		
	R-925-6	R-1746-8-9-50	
	R-928-31; 933	R-1741; 1746	R-699-704
	R-933		R-730; 808
	R-933-36	R-1741-2	R-707-8-9 R-710; 1148
	R-936-43	R-1742-3	R-712-3; 1148-52
	R-943-46	R-1751-3 R-1743	R-713-14; 1154
	R-947-57	R-1643-5	R-715-6-7; 1155-6 R-1646-8
	R-957-60		R-719-20
	R-960-2	R-1668	R-721-2; 1153
		R-1649;1736 R-1737-40	

	To Purchase Royalties	R-1458		R-887		
	Interest on Note at Bank	R-1456		R-888		R-686 R-807
	To Purchase Royalties	R-1458		R-889		
	Interest on Note at Bank	R-1458		R-889		
	Interest on Note at Bank	R-1458-9		R-889-93; 896		R-686 R-807
	To Pay Note at Bank	R-1459-60-1		R-899-900		
	Note at Bank	R-1459		R-889-93; 896		R-686 R-807
	Note at Bank	R-1459-60-1		R-890-3; 896		R-686 R-807
	Note at Bank	R-1459-60-1		R-890-3; 896		R-686 R-807
	Note at Bank	R-1459-60-1		R-900		
	Note at Bank	R-1461		R-890-3; 896		R-686 R-807
	Note at Bank	R-1459-60-1		R-901		
	Interest on Note at Bank	R-1461		R-901-2		
	Interest on Note at Bank	R-1461		R-902-3		
	Interest on Note at Bank	R-1461		R-890-3; 896		
	Interest on Note at Bank	R-1459-60-1		R-903		
	To Pay Note at Bank	R-1461		R-903-4		
	To Pay Note at Bank	R-1461		R-904		
	To Pay Note at Bank	R-1461		R-905		
	To Pay Interest on Bank Note	R-1461		R-905-6		
	To Pay Note at Bank	R-1461		R-906-7		
	To Pay Note at Bank	R-1461		R-907-8		R-696-7
rough	To Repay Loan	R-1462-3		R-908		
	To Pay Note at Bank	R-1462-3		R-910-11		
	To Pay Note at Bank	R-1462-3		R-911-12		R-697
nv. Co	To Pay Marlborough Note	R-1462-3		R-912-13		
	To Pay Note at Bank	R-1462-3		R-913-14		
	To Pay Note at Bank	R-1462-3				

raph XVIII. (R-201)

, which was misappropriated by Peckham with the ..... R-1461-2 ..... R-914-5-6-7 ..... R-1750-1 ..... R-807; 916
R-920-4

raph XIX. (R-201)

the knowledge of the Bank, with which to pay R-1399; 1404-6; R-1424-6; 1440-1
ns to the Bank ..... R-1378-9; R-1476; 1442-3; 1504 ..... R-925-6 ..... R-1746-8-9-50

h LIV. (R-219-20-21-22)

Royalty was a wrongful purchase ..... R-1466-7; 1545-6 ..... R-928-31; 933 ..... R-1741; 1746 ..... R-699-704 ..... R-700-1

raph LV. (R-222-23)

mobile was a wrongful transaction ..... R-1470 ..... R-933 ..... R-730; 808

aph LVI. (R-223-24)

son Royalty was a wrongful series of transactions ..... R-1468-72; 1545-7 ..... R-933-36 ..... R-1741-2 ..... R-707-8-9; R-710; 1148 ..... R-706; 1147

raph LVII. (R-224)

lands was a wrongful transaction ..... R-1471; 1547-8 ..... R-936-43 ..... R-1742-3 ..... R-712-3; 1148-52

raph LIX. (R-225)

alty was a wrongful transaction ..... R-1472-3 ..... R-943-46 ..... R-1751-3; R-1743 ..... R-713-14; 1154

aph LXII. (R-226)

Vernon Royalties was a wrongful transaction ..... R-1473-5 ..... R-947-57 ..... R-1643-5 ..... R-715-6-7; 1155-6; R-1646-8

ph LXIX. (R-228)

ent was a wrongful transaction ..... R-1454; 1550 ..... R-957-60 ..... R-719-20 ..... R-721

h LXXIV. (R-229)

oyalty was a wrongful transaction ..... R-1472; 1548 ..... R-960-2 ..... R-1668 ..... R-721-2; 1153

LXXV. (R-229-30)

Peckham, with the knowledge of the Bank, ... R-1399; 1404-6; R-1424-6; 1440-1
his personal indebtedness to the Bank ..... R-1465; 1504 ..... R-1649; 1736; R-1737-40

We point out some of the many errors found in petioner's brief.

The old bank never became insolvent, in that its assets were insufficient to pay its debts. The only question was as to whether it could pay the depositors on demand. (R. 431.)

The item of $2,550 mentioned by the trial court (R. 1928) was a check dated January 8, 1926, signed by G. W. Peckham for the purchase price of his interest in the Curlee land. It was paid on January 11, 1926, and the proceeds of the check were deposited to the credit of W. S. Curlee. (R. 571.) The check is Defendant's Exhibit 155, R. 1298. The Bank received none of the proceeds of this check. The check did not create an overdraft. (R. 582.) Peckham's balance after the payment of this check was $4,888.30. The deed from Curlee to Peckham and Harrell was dated 1-8-26. (R. 483.)

It is stated by petitioner that Harrell personally received with Basham $24,611.02. While this statement is correct, this sum was received open and aboveboard for the sale price of the Stephens Royalty, which was retained and held by the present trustee and sold by him. The venture was clearly within the terms of the Trust. Harrell's testimony (R. 1264-1273), Carson's testimony (R. 833-839), Lambert's testimony (R. 1447-1449, 1481), and Scannell's testimony (R. 1175-1180) show nothing was wrong with this transaction.

While it is true that Peckham transferred large sums of money during his tenure of office as trustee from the Royalty account to his personal account, to wit, $186,-859.20, instead of the amount stated by the petitioner,

nevertheless he purchased many valuable royalties for the Company with his personal funds and was reimbursed therefor, about which there is no question. The total aggregate amount of income therefrom would greatly exceed the total amount of the transfers. It must be noted that this trust under Peckham's administration was profitable to the stockholders and paid, as the trial court points out, 118 per cent in dividends. It is also to be noted that during this same period of time the total aggregate amount of Peckham's deposits in his personal account was the sum of $1,688,534.13. (R. 1354, Plaintiff's Exhibit 207.)

It is true that many of the checks in question were payable to the payee bank, but this was a plan instituted by Scannell prior to the time Peckham became trustee of making disbursements on checks payable to the payee bank. It had no significance. (R. 1465.)

The statement on page 7 of the petitioner's brief that Peckham executed a deed and handed it to the trust's bookkeeper, with a letter stating that *Harrell* was unwilling to be associated in the stock company, is at variance with the letter shown on page 786 of the Record, and, while the Supreme Court of Texas held that Marlborough was not a proper account, this was held, under the false testimony of Scannell, that the deed had not been delivered.

On page 8 petitioner states that $15,250 was to apply, but did not apply, upon the Trust note payable to the Bank. This statement is not correct. Checks issued in the amount of $9,174.66, with voucher notations "to apply on notes payable to the bank," were deposited in

Peckham's personal account, of which amount Peckham actually applied $7,244.99, leaving a balance of $1,-929.67 unaccounted for. (R. 1491; also R. 1503, 1504.)

Respecting the item of $15,140.78, all of these royalties were shown by the books of the Company to have been acquired by the Company. The Hartley County Royalty of $1,920 was a contemporaneous transfer from the true owner to Peckham and from Peckham to the Company. He was merely a conduit. Many others, as found by the trial court, were of the same nature. (R. 1926.)

The Callahan County Royalty transfer was made direct by A. J. Mathis to the Wichita Royalty Company. (R. 817.) The deed is shown R. 568, 569.

The Porter Ranch was taken in the name of Knight & Hines, who held the ranch in trust for the Royalty Company and the other joint owners. (R. 1169-1171.) The Record shows that the Royalty Company owned an undivided one-eighth interest in this ranch and the stockholders were notified of its acquisition. (R. 1171.) It paid, along with the other joint owners, its exact pro rata of the cost.

While it is stated by petitioner that the stockholders were never advised as to the source of the various titles, nevertheless all of the deeds, including the deed to Marlborough, were kept by Scannell, open for inspection to any stockholder. (R. 731, 737.)

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NO. 314

IN THE

Supreme Court of the United States

OCTOBER TERM, 1938

WICHITA ROYALTY COMPANY ET AL, *Petitioners,*

versus

CITY NATIONAL BANK OF WICHITA FALLS ET AL,
Respondents.

PETITIONERS' MOTION TO TAX COSTS

RAY BLAND,
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Of Counsel.

BAILEY-WICHITA FALLS

NO. 314

IN THE

Supreme Court of the United States

OCTOBER TERM, 1938

WICHITA ROYALTY COMPANY ET AL, *Petitioners*,

versus

CITY NATIONAL BANK OF WICHITA FALLS ET AL,
Respondents.

Petitioners move that costs incurred in the Circuit Court of Appeals be taxed against Respondents. This Court may rule on such costs as an incident to the case before it.[1] Neither the opinion nor the proposed decree disposes of costs so incurred.

The costs accrued in the Circuit Court of Appeals are $5,001.05, and have been paid by Petitioners herein. (See Appendix.) The Circuit Court of Appeals allowed costs to neither party (R. 2080). It reversed the judgment of the trial court and remanded the cause (R. 2069-2080 upon Petitioners' Assignment XLII (R. 1962) that the Judge had not complied with Equity Rule 70½. The

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[1] Clerke v. Harwood, 3 Dall. 342, 1 L. Ed. 328. See *Dyer v. National Steam Navigation Company*, 118 U. S. 507, wherein it is held:

"When the entire case is before the appellate court, it has control of the subject of costs, as well as of the merits. Trustees v. Greenough, 105 U. S. 527."

Banks did not assign this as error. (R. 2063-2065). They urged that the trial court's general observations "fully comply with the requirements of Equity Rule 70½." (Second Proposition, P. 21, Banks' Brief, Circuit Court of Appeals). J. T. Harrell, the Bank's vice president, did not appeal. No other Respondent appealed. The Circuit Court recognized that the point was raised only by petitioners. (95 Fed. (2d) 671, 674; R. 2071). So Petitioners were charged and have paid $5,001.05 for assigning the Error that the Circuit Court of Appeals has sustained and this Court has approved.

It is respectfully submitted that Petitioners should be allowed their costs in the Circuit Court of Appeals since this Court has determined the Circuit Court to be wrong in its declaration of the applicable law but to be right in remanding the cause to correct the error of the District Court in its failure to find facts as assigned only by Petitioners.

This Court has affirmed the judgment of the Circuit Court of Appeals, which may not enter an Order on costs different from its previous order. The Circuit Court's judgment becomes final. Its review of the matter of costs was invited by a Petition for Rehearing, (R. 2083) which it denied (R. 2085). Therefore, Petitioners must have relief, if at all, in this Court.

Petitioners' appeal has resulted in establishing the law to be different from that decided by the trial court and the Circuit Court of Appeals. The law thus established will necessarily lead to a recovery in their favor. The Judge found that the Bank received $2,550.00 (January 11, 1926) on Peckham's personal debt out of trust

funds transferred. (R. 1928). Likewise the Court found "there was a direct benefit to the Bank out of the $25,000.00 loan to the trust" (March 1, 1926) of such an amount "to take from the complainant (Bank) any right to recover here" (R. 1930).

Marlborough Addition, Ellis County Royalty, Hartley County Royalty, North Anderson Ranch Royalty, and Polk Lands were pleaded in the original suit. They involve large amounts of money. The Supreme Court of Texas held that they constitute no authorized account for trust funds transferred to the trustee's account. Marlborough alone involved a minimum of $55,719.44 (R. 1660; 1542). All these transactions transpired *after* January and March, 1926.

As the successful parties to the appeal, both with respect to the trial court's judgment and with respect to the applicable law, Petitioners meet every requirement of the established rule that the costs of the appeal will be taxed against the losing party. The application of any other rule would penalize the successful party to the appeal.

WHEREFORE prayer is made that Petitioners be allowed their costs in the Circuit Court of Appeals, and that the same be taxed against the Respondents herein.

Attorney for Petitioners.

RAY BLAND,
KILGORE & ROGERS,
Of Counsel.

OFFICE OF THE CLERK

UNITED STATES CIRCUIT COURT OF APPEALS

FIFTH CIRCUIT

NEW ORLEANS, LA. April 29, 1938.

Messrs. Kilgore & Rogers,
Attorneys at Law,
Wichita Falls, Texas.

Gentlemen:-

I beg to advise you that I am today forwarding to the clerk of the U. S. District Court, at Wichita Falls, the mandate of this court in re -

No. 8541. Wichita Royalty Company, et al., appellants and cross-appellees, vs. City National Bank of Wichita Falls, et al., appellees and cross-appellants, (AND REVERSE TITLE).

Attached thereto is a detailed statement of the costs in this court, and of the deposit made therefor as follows:-

8/2/37, Deposited by you		$ 3000.00
" 5 " " " "		585.20
9/20 " " " "		1687.30
		$5272.50
Clerk's costs	$ 533.30	
Printing record	$4467.75	5001.05
Balance to be refunded		$ 271.45

for which amount you will find enclosed my check No. 5023 on the Whitney National Bank of this city to your order. Please acknowledge receipt, and oblige,

Yours very truly,

OAKLEY F. DORD, Clerk,

By _____
Deputy Clerk

MB-
Enc.

CC Mr. Charles L. Black

SUPREME COURT OF THE UNITED STATES.

No. 314.—October Term, 1938.

Wichita Royalty Company, et al., Petitioners, vs. City National Bank of Wichita Falls, et al. } On Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.

[January 30, 1939.]

Mr. Justice Stone delivered the opinion of the Court.

We are asked to determine whether the Circuit Court of Appeals correctly applied the law of Texas in a suit upon a cause of action arising in that state between a Texas association acting under a declaration of trust and a national bank doing business there.

The proceedings in the present litigation have been extensive and complex but only those relevant to the issue presented here need be detailed. Respondent, the City National Bank of Wichita Falls, brought suit in a Texas court against the association, petitioner here, and its trustee to recover on two promissory notes, one made and the other endorsed by petitioner. They filed a cross-action against the bank, impleading its vice-president, to recover a deposit balance in favor of petitioner on the ground that the bank had improperly charged the account with drafts drawn upon it by Peckham, a former trustee of petitioner, or at his direction, and that Peckham, in breach of trust, had used the proceeds in part to pay his own debts to the bank or its vice-president, and in part for other expenditures for his own benefit.

The misappropriations were alleged to have been effected by the withdrawal of funds from the deposit account by a large number of checks signed by Peckham as trustee, or at his direction, and payable to his own order or to the bank. Some were alleged to have been credited by the bank in payment of the trustee's personal debts and some to his personal account with the bank, from which he later withdrew a substantial part of the amounts so deposited and used it for his own purposes. Petitioner contended that some of the funds thus withdrawn from his personal account were used

in payment of his personal debts to the bank or its vice-president and that the bank and its vice-president, because of the transactions with the bank and the form of the checks, had notice of and had participated in the breaches of trust or some of them and to that extent were liable for all the misappropriations.

The trial court directed a verdict and entered judgment in favor of the bank on the notes and against petitioner on its cross-action. On appeal the Supreme Court of Texas reversed and remanded the cause for a new trial upon such further evidence as might be adduced, and in its opinion stated the applicable principles of law for the guidance of the trial court. 127 Tex. 158, 184. Meanwhile, the bank had closed its doors. Its assets were taken over by respondent, the newly organized City National Bank in Wichita Falls, which assumed the liabilities of the old bank.

On the remand the directors and the liquidating agent of the old bank and the new bank were made parties defendant to the cross-action by petitioner association, and the pleadings were amended so as to charge the new individual defendants with responsibility for the liability originally asserted against the old bank, and also to charge the new bank by reason of its acquisition of the assets and its assumption of the liabilities of the old one.

The cause was then removed to the federal District Court for northern Texas, under §28 of the Judicial Code, 28 U. S. C. §71. On the trial of the cause there, in the course of which voluminous evidence was taken before a commissioner, the District Court denied recovery to the old bank on the promissory notes and to the association upon its claim against the old bank and the various other parties sought to be charged with its liability, but directed that jurisdiction be retained to wind up the affairs of the insolvent bank. § 24(16) of the Judicial Code, 28 U. S. C. § 41(16); *International Trust Co.* v. *Weeks*, 203 U. S. 364.

The Court of Appeals for the Fifth Circuit set aside the decree because of the failure of the trial court to make findings of fact and state conclusions of law as required by Equity Rule 70½. 95 F. (2d) 671. In remanding the cause the court stated, for the guidance of the trial court, principles of law which it thought applicable to the cause of action asserted by the association. These were at variance with those which the Texas Supreme Court in its earlier remand of the case had declared to be controlling. It rejected in part the rulings of the state court because

it thought that the questions presented were of general commercial law, with respect to which the federal courts were not bound by local decisions, and that the rules which the Texas courts had adopted were not favored by the decisions of the federal and some state courts.

In its opinion denying a second petition for rehearing, 97 F. (2d) 249, presented after our decision in *Erie Railroad Co.* v. *Tompkins*, 304 U. S. 64, the court disclaimed any purpose not to follow the law of Texas, but reaffirmed its instructions for the trial court on the ground that they were in harmony with the opinion of the Supreme Court of Texas in a later case, *Quanah, Acme & Pacific Ry. Co.* v. *Wichita State Bank & Trust Co.*, 127 Tex. 407, which the Court of Appeals thought had modified and restricted the rules announced by the state court on the appeal in this case. We granted certiorari, — U. S. —, on a petition urging that it was the duty of the Court of Appeals to apply the law as defined by the Supreme Court of Texas on the first appeal, the question, concerning the relations of the federal and state courts, being of public importance.

In departing from the "law of the case", as announced by the state court, and applying a different rule, the court below correctly stated that by reason of the removal it had been substituted for the Texas Supreme Court as the appropriate court of appeal and that it was its duty to apply the Texas law as the Texas court would have declared and applied it on a second appeal if the cause had not been removed. It was the duty of the federal court to apply the law of Texas as declared by its highest court. *Erie Railroad Co.* v. *Tompkins, supra.* But the case on the first appeal had not become *res judicata*. *Remington* v. *Central Pacific Ry.*, 198 U. S. 95, 99, 100; *Messenger* v. *Anderson*, 225 U. S. 436, 444; *Diaz* v. *Patterson*, 263 U. S. 399, 402; *Seagraves* v. *Wallace*, 69 Fed. (2d) 163, 164, 165. And since the Supreme Court of Texas holds itself free upon reconsideration to modify or recede from its own opinions, see *Quanah, Acme & Pacific Ry. Co.* v. *Wichita State Bank & Trust Co., supra*, superseding 89 S. W. (2d) 385, the court below, in applying the local law, was likewise free to depart from the earlier rulings to the extent that examination of the later opinions of the Texas Supreme Court showed that it had modified its opinion on the first appeal. Hence the only question for our decision is whether the Court of Appeals rightly concluded that the state court had thus altered its opinion.

The Court of Appeals held, as did the Texas Supreme Court, that the old bank, so far as it had accepted payment of the trustee's personal debts from his personal account, with notice that the payments had their source in trust funds, had become liable for the trustee's misappropriations by reason of its participation in them. But the two courts differed with respect to the liability of the bank for trust funds commingled with the trustee's personal account and later withdrawn and used for his personal benefit. The state court had ruled that the bank was responsible for all such misappropriations as took place after it had knowingly accepted trust funds in payment of the trustee's personal debts. Pointing out that there was evidence of such transactions, it declared, 127 Tex. 158, 174, 175: "the Bank, after being charged with knowledge of Peckham's dishonest dealings, continued to credit Peckham's personal account with checks drawn on the Trust account, and persisted in its course of dealings with respect to the two accounts. Having incurred the burden of ascertaining whether subsequent expenditures made by the Trustee from the commingled funds were for authorized Trust purposes, it cannot effectively complain of the weight of that burden". And it concluded, 127 Tex. 158, 182: "It is apparent from what has been stated that the amount of the Bank's liability is the difference between the total amount of the deposits [of trust moneys] for which Peckham's personal account received credit after he began commingling Trust funds with his own on October 8, 1925, and the total amount of withdrawals therefrom which the Bank may show were used for authorized Trust purposes."[1]

The court below, relying on the decision of the Texas Supreme Court in the later *Quanah* case, declined to accept this conclusion. Instead it declared that the bank was not chargeable with notice of the trustee's misappropriations through withdrawal and use of trust funds deposited in his personal account by the bare fact of its knowledge that the trustee had previously paid his personal debts to the bank with trust funds passed through his personal account. But the *Quanah* case presented a different question from that considered by the Texas court in the present case. The former involved no question of actual knowledge and participation by the

[1] The opinion assumed that all the funds in the personal account on October 8, 1925, were trust funds and that on November 17, 1925, the trustee paid his personal indebtedness to the bank from those funds. 127 Tex. 158, 168. In its opinion on the motion for rehearing the court stated that these assumptions were not to be taken as foreclosing proof of the facts upon the new trial. 127 Tex. 158, 184.

bank in the misappropriation of trust funds. There an officer of a corporation deposited its funds in his personal account in a bank with which the corporation had no account. The bank had knowledge that the funds or some of them belonged to the corporation and not to the officer personally, but it paid them out on the order of the officer, who appropriated them to his own use. In holding that the bank was not liable, the court adopted the rule, for which it found support in the decisions of other courts and in text writers, that the bank in such circumstances is not liable for the misappropriation. The court was at pains to point out that a different rule would have been applicable if, before the withdrawals from the account, "the bank [had] actively participated in the spoliation of the trust fund and knowingly received a part of the fund to itself in payment of the trustee's individual debt to it", citing its opinion in the present case. 127 Tex. 407, 421, 422.

Even if we thought this distinction not well taken, nothing requires the state courts to adopt the rule which the federal or other courts may believe to be the better one, or to be consistent in their decisions if they do not choose to be. That the distinction taken in the *Quanah* case was advisedly made and was not intended to modify the rule announced by the state court on the appeal in this case, appears from the opinions in both cases. On the same day that the final opinion in the *Quanah* case, from which we have quoted, was delivered by the Texas Supreme Court, it denied a petition for rehearing in the present case, with an opinion, 127 Tex. 184, which left undisturbed the principles announced in the first decision. In its final opinion in the *Quanah* case it said: " . . . we have again carefully reviewed the opinion in the *Wichita Royalty Co. et al.* v. *City National Bank of Wichita Falls* case, . . . , decided by this court on the same day the case at bar was originally decided. . . . We are satisfied with our opinion in the *Wichita Royalty Company* case as explained by our opinion on rehearing in that case." 127 Tex. 407, 421, 422. As there is no contention that the opinion of the Texas court in this case has in any other respect been modified by the *Quanah* or any other case in the Texas Supreme Court, we do not discuss other parts of the opinion below which it is argued fail to follow the opinion of the state court.

We think that the opinion of the Supreme Court of Texas in the present case has not been modified by the *Quanah* case and must

be accepted as stating the law of Texas; and that it affords the appropriate guide for the District Court so far as it may be applicable to the facts which have been developed on the trial there. As the court below properly directed the remand for a statement of findings and conclusions of law under the equity rule, the decree will be affirmed but the proceedings in the District Court will be in conformity to this opinion.

Affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.